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# Annual Report on the Status of the Maine Workers' Compensation System, 2007

Maine Workers' Compensation Board

Maine Bureau of Labor Standards

Maine Bureau of Insurance

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# **Annual Report on the Status of the Maine Workers' Compensation System**

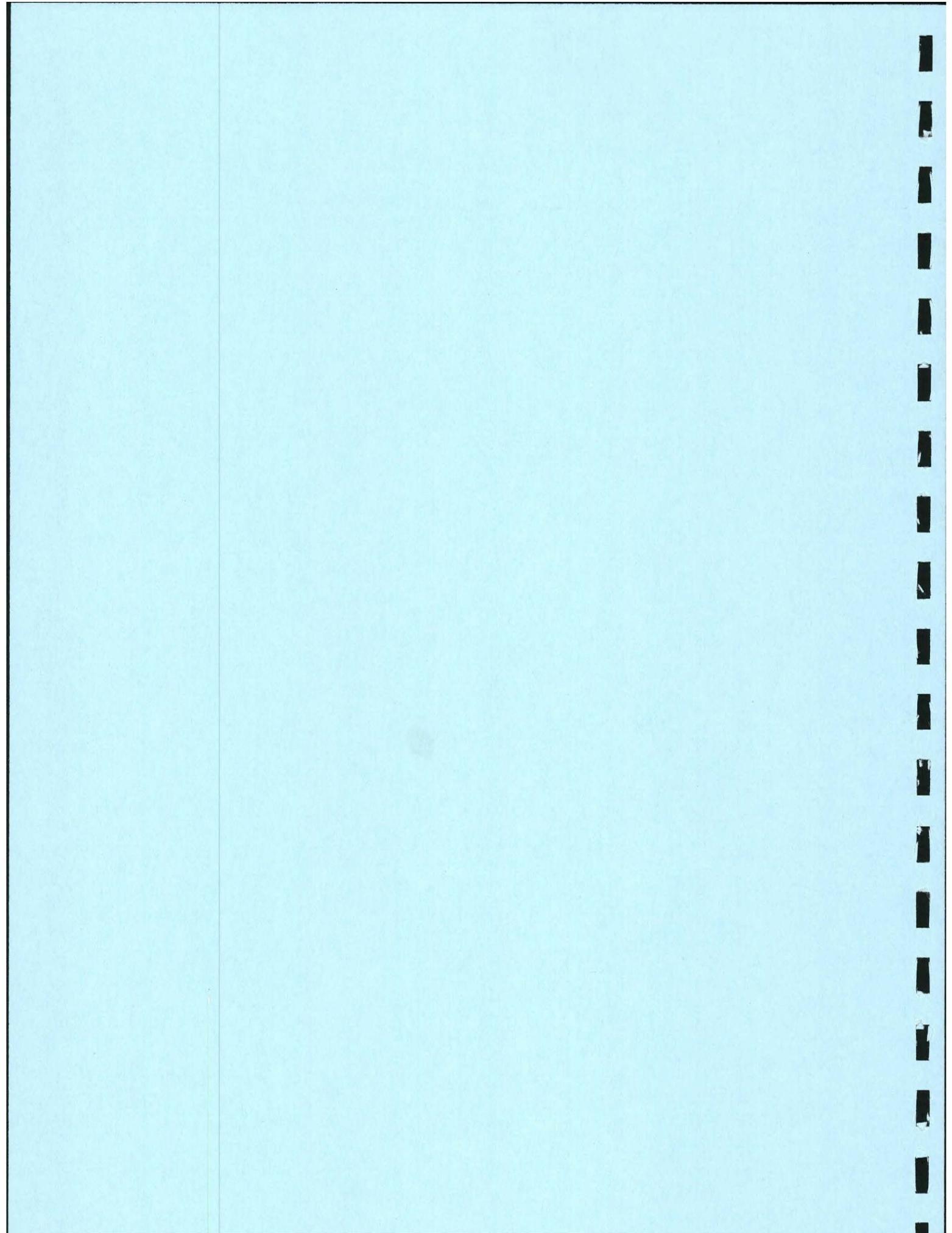
**Submitted to the  
123<sup>rd</sup> Legislature  
(First Regular Session)**

**February 2007**

William A. Peabody  
Director  
Bureau of Labor Standards  
Department of Labor

Paul R. Dionne  
Executive Director  
Workers' Compensation Board

Alessandro A. Iuppa  
Superintendent  
Bureau of Insurance  
Department of Professional and  
Financial Regulation





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JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
**WORKERS' COMPENSATION BOARD**  
DEERING BUILDING, AMHI COMPLEX  
27 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0027

PAUL R. DIONNE  
EXECUTIVE DIRECTOR/CHAIR

February 1, 2007

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Governor of the State of Maine  
1 State House Station  
Augusta ME 04333-0001

The Honorable Beth G. Edmonds  
President of the Senate  
3 State House Station  
Augusta ME 04333-0003

The Honorable Glenn Cummings  
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Senator Nancy B. Sullivan, Chair  
Representative John R. Brautigam, Chair  
Joint Standing Committee on  
Insurance & Financial Services  
100 State House Station  
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Senator Ethan Strimling, Chair  
Representative John L. Tuttle, Jr.,  
Chair  
Joint Standing Committee on Labor  
100 State House Station  
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We are pleased to submit to the Governor and the 123<sup>rd</sup> Legislature, First Regular Session, the Annual Report on the State of Maine workers' compensation system as required by Title 39-A § 358-A(1).

The Annual Report profiles the current status of the workers' compensation system in Maine and is submitted by the three State agencies most involved in the workers' compensation system.

Paul R. Dionne  
Executive Director/Chair  
Workers' Compensation Board

Alessandro A. Iuppa  
Superintendent  
Bureau of Insurance  
Department of Professional & Financial  
Regulation

William A. Peabody  
Director  
Bureau of Labor Standards  
Department of Labor

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## **EXECUTIVE SUMMARY**

The Workers' Compensation Board, in consultation with the Superintendent of Insurance and the Director of the Bureau of Labor Standards, is directed by Title 39-A, Section 358-A(1) to submit an annual report on the status of the workers' compensation system to the Governor and the Joint Standing Committee on Labor and Joint Standing Committee on Banking and Insurance by February 15 of each year.

### **Workers' Compensation Board**

The Governor worked diligently with both labor and management to ensure the passage of Public Law 2004 Chapter 608 which became effective April 8, 2004. The intent of the legislation was to break the Board's gridlock on key issues and return a sense of normalcy to the agency's operations. The legislation changed the structure of the Board from eight members to seven. Three members represent labor and three represent management. The seventh member is the Executive Director, who serves as Chair of the Board and at the pleasure of the Governor. Since the effective date of the legislation, the Board has resolved all of the gridlock issues and functions in an effective manner in setting policy for Board business. Some of the difficult issues the Board has acted on include: hearing officer appointments; hearing officer terms; budgetary and assessment matters; Section 213 actuarial studies; electronic filing mandates; by-law revisions; legislation; compliance issues; independent medical examiners; worker advocates; and dispute resolution issues.

The importance of the Governor's legislation (Chapter 608) cannot be overly emphasized. The State of Maine has gradually improved its national rating regarding the costs of workers' compensation and an effective and efficient Board will help to perpetuate this positive trend. But recently the Board has been divided on issues such as the budget, independent medical examiners, and Section 213 issues (extension of benefits and permanent impairment thresholds). These are issues of particular importance to both Labor and Management, but issues on which they have been unable to reach consensus. Decisions are regularly made by the Chair in a tie-breaking manner, which means, in large part, that the parties of interest are not reaching consensus on decisions that impact their constituencies.

It was not too long ago that Maine was one of the costliest states in the nation in regard to workers' compensation costs. A recent article in the *Workers' Compensation Policy Review* compared the costs of benefits for 47 states and highlighted Maine's achievements during the past few years: "The experience in Maine ... clearly demonstrates that significant reduction in cash, medical, and total benefits are possible."

The 2005 Edition of *Workers' Compensation State Rankings Manufacturing Industry Costs* provides a costs comparison for the manufacturing section in 45 states. The purpose of the study is to provide a comparison as to the cost of obtaining workers' compensation coverage among states. Maine's rank was 28<sup>th</sup> among 45 states and Maine's rank was 3<sup>rd</sup> among the New England states with only Massachusetts and Rhode Island faring better than Maine. The Oregon Department of Consumer and Business Services reports every two years as to overall premium

costs per State. In 2002 Maine's ranking among the 50 states was 8<sup>th</sup>; in 2004, it was ranked at 13<sup>th</sup>; and in 2006 it was ranked at 8<sup>th</sup>.

And in a recent report, *Fiscal Data for State Workers' Compensation Systems*, designed to provide employers and public policymakers with comparative statistics on state workers' compensation costs, Maine was listed as one of the states with the largest decrease in its benefit costs rate: Alabama (-7.9%), Colorado (-11.2%), Kansas (-16.5%), **Maine (-12.9%)**, Nevada (-14.7%), Rhode Island (-15.2%), and Utah (-13.2%).

Maine has gone from one of the costliest states in the nation to one that is moving to the level of average costs for both premiums and benefits and has positioned itself to continue this trend. Maine appears to have struck a balance between reasonable costs and reasonable benefits, all within the Governor's policy making Maine even-handed and competitive.

The issues to be dealt with during the First Regular Session of the 123<sup>rd</sup> Legislature include: Increase of resources for the Worker Advocate Program; a modification of the Independent Medical Examiner System; and consideration of a change to Section 213, extension of benefits and permanent impairment threshold; as well as Board proposed bills: the inclusion of domestic partners for waiver of coverage; penalties paid to providers or employees for non-payment of medical bills; clarification of appellate procedures; and authorization for the Attorney General or private counsel to enforce penalties.

## Bureau of Insurance

The advisory loss costs, the portion of workers' compensation insurance rates which cover the projected for loss and loss adjustment expenses, continue to remain steady. They are on average 37 percent lower than they were at the time of the last major reform to the system in 1993. For the first time since 1993, the National Council on Compensation Insurance (NCCI) did not make an advisory loss cost filing. After a complete analysis by the Bureau of Insurance of the data and assumptions that NCCI utilized in compiling the indicated rate change in the 2007 advisory loss costs, it was decided that advisory loss costs would not change for the year beginning January 1, 2007.

The workers' compensation insurance market in Maine is an open competitive one. By law the Superintendent cannot determine that any insurance company's rates are excessive and market competition ultimately controls the rate level. However, Maine's workers' compensation insurance market is quite concentrated. Maine Employer's Mutual Insurance Company accounts for 65 percent of the written premium. The top three insurer groups (companies under common ownership) account for 79 percent of the market and the top five account for 88 percent of the market. MEMIC's market share is twenty percent higher than it was in 1999.

Insurers, through multiple affiliate companies or through multiple rate levels or tiers, offer different prices to employers based on the insurer's perception of the likelihood of claims. For the past two years, the bureau has conducted a survey of insurers in the top 10 insurance groups. One positive change in the past year is that a higher percentage of policyholders are receiving rates below MEMIC's Standard Rating tier. Though only approximately 11 percent of reported policyholders are receiving rates below that level, this is over five percent more than were a year

ago. The number of policyholders receiving rates above MEMIC's Standard Rating tier remained at about nine percent. The difference is that those with rates at the level of MEMIC's Standard Rating tier decreased by about five percent. This seems to indicate that other insurers are offering better rates to more employers than they had a year ago.

Self-insured employers continue to account for over 40 percent of the Maine's workers' compensation market. There are 71 self-insured employers in Maine and twenty self-insurance groups. Group self-insured plans generally have rates lower than those available from the insured market.

Employers purchasing coverage from insurance carriers have options to reduce their premiums. Nearly all employers are eligible to elect small deductibles whereby the employer reimburses the insurer for a specified amount of losses for either indemnity or medical payments in return for a small percentage reduction in premium. Some employers are eligible for large deductibles. Merit rating and experience rating are a means to receive credits for those employers who maintain a low frequency and severity of claims. Those employers who have higher than expected frequency and severity of claims receive debits, however. Schedule rating is a means for insurers to consider other factors not already considered in experience rating. Employers who do things like cooperate with their insurers, develop safety plans, keep their premises in good condition, install safety devices, have management stability, train their employees, and establish return to work programs may be eligible for a credit. Employers that maintain a safe work environment and control their losses should continue to see insurers competing for their business. New businesses and businesses with unfavorable loss experience will have fewer options.

Maine's workers' compensation insurance market remains relatively stable with Maine Employers' Mutual the primary insurer and a substantial portion of the market self-insured. There has been some downward movement in costs for preferred risks in the insurance market during 2006 and MEMIC returned \$12 million in dividends to policyholders this year.

## Bureau of Labor Standards

The Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses by a variety of means. Under Title 26 MRSA § 42-A, the BLS is charged with establishing and supervising safety education and training programs. Additionally, the BLS has the power and duties to collect, assort, and arrange statistical data on the number and character of industrial accidents and their effects upon the injured. The MDOL is also responsible for enforcement of Maine labor laws and the related rules and standards.

SafetyWorks! is an identity that encompasses the occupational safety and health (OSH) training, consultation and outreach functions of the BLS. These activities include use of WCB data to respond to requests for information from the OSH community and the general public on the safety and health of Maine workers. SafetyWorks! instructors also design their safety training programs based on industry profiles generated from data from the WCB *First Reports of Occupational Injury or Disease*, among other sources.

In terms of enforcement, the Wage and Hour Division of the BLS reviews and approves work permit applications to protect minor workers and inspects employers for compliance with Maine child labor law. The Wage and Hour Division uses the data from the WCB *First Reports*, among other criteria, to select employers for inspection. The Workplace Safety and Health Division of the BLS enforces safety regulations *in the public sector only*. The Workplace Safety and Health Division prioritizes state and local agencies for inspection based on the agencies' injury and illness data from the WCB, the results of the Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses, or complaints from employees or employee representatives.

Effective workplace injury and illness prevention requires a detailed working knowledge of all factors contributing to occupational safety and health. The WCB collects data from its *First Reports*, which the BLS electronically imports for coding and analysis. In addition, the following annual data collections are administered by the Research and Statistics Unit of the BLS: 1) the Federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses, 2) the Federal Occupational Safety and Health Administration's (OSHA) Data Initiative, and 3) the Census of Fatal Occupational Injuries. Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. The BLS also conducts research on narrower foci, both annually and from time to time. In 2006 such research took the form of:

- Continuation of capacity building in OSH surveillance
- Development of a new reporting form

A serious problem is missing data in WCB *First Reports* submitted by Electronic Data Interchange (EDI). Missing fields prevent useful analysis and BLS must therefore collect the data by phone, very time-consuming. A separate, chronic problem in the use of WCB data is that around 50% of *First Reports* are missing the date for the employee's return to work. The "return to work" date is a critical data element for a number of important purposes. The problem is at least partly due to a built-in functionality of the WCB system. Another problem is the weakness of linkage between WCB costs data and *First Reports* data.

The Occupational Safety and Health Data Collection and Injury Prevention Work Group was convened September 29, 2003, by the Department of Labor under 2003 Public Law chapter 471. Membership includes representatives of the WCB staff. Among the primary purposes of the Work Group is the identification of ways to improve the collection and analysis of occupational safety and health data. Such problems in data collection and sharing are being closely examined and there is good reason to hope for improvements. The Work Group will be reporting to the legislature in 2007 on specific problems and recommendations.

No research grants were applied for in 2006 because NIOSH funding was unavailable. The Maine Occupational Research Agenda (MORA), created in 2000 on the model of the National Occupational Research Agenda, identified three research priorities in 2005. These were occupational asthma, cost drivers, and pesticide related illnesses. In 2006, MORA saw activity initiated under all three of these priorities. Mora also started its small grants program in 2006.

In 2006, the Research and Statistics Unit of BLS continued its data outreach initiative, placing its accumulated data and data-related services before the public. SafetyWorks! administered the Safety and Health Achievement Recognition Program (SHARP) in the private sector and began the parallel Safety and Health Award for Public Employers (SHAPE) in the public sector as means of recognizing outstanding employer safety programs.

Important OSH legislation in 2006 was 2005 Resolves, chapter 167 (LD 1699), "Resolve, to direct the Department of Labor to coordinate a Task Force to Examine and Study Issues Relating to Workplace Safety and Workplace Violence." The report from this task force was due January 15, 2007.

**SECTION A**

**WORKER'S COMPENSATION BOARD**

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## 1. INTRODUCTION

The original agency, known as the Industrial Accident Board, began operations on January 1, 1916. In 1978, it became the Workers' Compensation Commission. In 1993, it became the Workers' Compensation Board.

The major programs of the Board fall into six categories: (1) Dispute Resolution; (2) Compliance – Monitoring, Auditing, and Enforcement (MAE) Program; (3) Worker Advocate Program; (4) Independent Medical Examiners/Medical Fee Schedule; (5) Technology; and (6) Central and Regional Office support.

The implementation of Standard Operating Procedures (SOPs) has resulted in the elimination of backlogs and an efficient dispute resolution system. But a recent Law Court decision in regard to the Independent Medical Examiner program has reversed some of the progress. The Law Court holding in *Lydon v. Sprinkler Systems* has resulted in a reduction in the number of independent medical examiners causing significant delays to the formal hearing process. Cases without an IME are processed within 8 months, while cases with an IME are taking over 18 months to process through the formal hearing system. The *Lydon* decision has hampered the Board's ability to attract doctors in the appropriate specialties to serve as independent medical examiners. The MAE Program has dramatically improved compliance throughout the industry both as to payments and filings. Because of the Worker Advocate Program, injured workers now have access to representation that enables them to receive the benefits to which they are entitled. Over 50% of injured workers are represented by advocates at the mediation level and over 30% are represented by advocates at the formal hearing level.

The Board has recently mandated the electronic filing of First Reports of Injury (July 1, 2006), Notices of Controversy (April to June 2006), and Memorandums of Payment and related documents (April to June 2007).

The Board's assessment was adequate to fund the Board's operations until FY97. In 1997, the Board implemented, legislation that expanded the Worker Advocate Program and created the MAE Program. The cost of these programs has been in excess of the amount allocated for the task. The cost of these programs increases in employee salaries and benefits, and general inflation created budgetary problems for the Board, in light of the maximum assessment set by law.

The Legislature recognized the urgency of the Board's situation in FY02. It took two steps: First, the Legislature authorized the use of \$700,000 from the Board's reserve account, and second, the Legislature authorized a one-time increase in the maximum assessment of \$300,000 to provide temporary assistance to the Worker Advocate Program. The Legislature also recognized the urgency of the Board's situation in FY03, and took the following steps: First, the Legislature authorized the use of reserve funds in the amount of \$1,300,000; second, the Legislature increased the assessment to fund a hearing officer position in Caribou in the amount of \$125,000; and third, the Legislature allocated funds from reserves to fund actuarial studies and arbitration

services to determine permanent impairment thresholds, and to fund a MAE Program position in the amount of \$135,000. These were short-term solutions and during the 2003 Legislative Term the Legislature increased the Board's assessment cap to \$8,350,000 in FY 04 and \$8,525,000 in FY 05. The Legislature also provided for greater discretion in the use of the Board's reserve account. Through the use of the reserve account, the Board was able to fund the FY-06-07 budget. Proposed legislation would eliminate the artificial cap and allow the Board to develop a budget based on the needs of the system.

The Board is not a General Fund agency and receives its revenue to fund its operations through an assessment on Maine's employers. The Legislature established the assessment as a revenue source to fund the Board, but capped the assessment, limiting the amount of revenue which can be assessed. The result of this assessment cap has been an inability to submit a balanced budget for the last five fiscal years. The Board plans to fund the anticipated shortfall for FY 08 through the use of funds from the reserve account. As a solution to the Board's long term funding issue and to raise the necessary revenue to fund the shortfall for FY 09, the Board has presented the Unified Current Services Budget Submission to the 123<sup>rd</sup> Legislature. This proposal amends Section 1, 39-A M.R.S.A. § 154(b) by eliminating the assessment cap beginning in fiscal year 2009.

The Board is attempting to improve efficiency and lower costs through administrative efforts ranging from mandating electronic data interchange, enforcing performance standards in the dispute resolution process, and enforcing compliance through the MAE program and the Abuse Investigation Unit.

In 2004 the Governor introduced a Bill, which was enacted by the Legislature as Chapter 608 and entitled "*An Act to Promote Decision-Making Within the Workers' Compensation Board.*" The purpose of the legislation was to break the gridlock that adversely affected the Board. The legislation reduced the size of the Board from eight to seven members and empowered the Governor to appoint an executive director, to serve as chair and chief executive officer of the Board. The Board has since resolved most of the gridlock issues and functions in a more effective manner in setting policy for the Board's business. This has resulted in the Chair casting numerous tie breaking votes while the parties of interest are not finding consensus.

Prior to the inception of the Maine Workers' Compensation Act (January 1, 1993), Maine was one of the costliest states in the nation in regard to workers' compensation costs. Recent studies demonstrate a dramatic improvement for Maine in comparison to other states. Maine has gone from one of the costliest states in the nation to one that is at average costs for both premiums and benefits, all within the Governor's policy of making the system fair and competitive for Maine's employees and employers.

## **2. ENABLING LEGISLATION AND HISTORY OF MAINE WORKERS' COMPENSATION**

### **I. ENABLING LEGISLATION.**

39 M.R.S.A. § 101, et seq. (Maine Workers' Compensation Act of 1992)

On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992.

### **II. REVISIONS TO ENABLING LEGISLATION.**

The following are some of the revisions made to the Act since 1993.

- **§ 102(11)(B-1).** Tightened the criteria for wood harvesters to obtain a predetermination of independent contractor status.
- **§ 113.** Permits reciprocal agreements to exempt certain nonresident employees from coverage under the Act.
- **§ 151-A.** Added the Board's mission statement.
- **§ 153(9).** Established the monitoring, audit & enforcement (MAE) program.
- **§ 153-A.** Established the worker advocate program.
- **§ 201(6).** Clarified rights and benefits in cases which post-1993 work injuries aggravate, accelerate, or combine with work-injuries that occurred prior to January 1, 1993.
- **§ 213(1-A).** Defines "permanent impairment" for the purpose of determining entitlement to partial incapacity benefits.
- **§ 224.** Clarified annual adjustments made pursuant to former Title 39, §§ 55 and 55-A.
- **§ 328-A.** Created rebuttable presumption of work-relatedness for emergency rescue or public safety workers who contract certain communicable diseases.
- **§§ 355-A, 355-B, 355-C, and 356.** Created the Supplemental Benefits Oversight Committee.
- **§§ 151, Sub-§1.** Established the Executive Director as a gubernatorial appointment and member and Chair of the Board of Directors.

### **III. STATE AGENCY HISTORY.**

The original agency, the Industrial Accident Board, began operations on January 1, 1916. In 1978, it became the Workers' Compensation Commission. In 1993, it became the Workers' Compensation Board.

#### **A. The Early Years of Workers' Compensation.**

A transition from common law into the statutory system we know today occurred during the late teens and early 1920's. Earlier, an injured worker had to sue his employer and prove fault to obtain compensation. Workers' compensation was conceived as an alternative to tort. Instead of litigating fault, injured workers would receive a statutorily determined compensation for lost wages and medical treatment. Employers gave up legal defenses such as assumption of risk or contributory negligence. Injured workers gave up the possibility of damages, beyond lost wages and medical treatment, such as pain and suffering and punitive damages. This historic bargain, as it is sometimes called, remains a fundamental feature of workers' compensation. Perhaps because of the time period, financing and administration of benefit payments remained in the private sector, either through insurance policies or self-insurance. Workers' compensation disputes still occur in a no fault system. For example, disputes arise as to whether the disability is related to work; how much money is due the injured worker; and, how much earning capacity has been permanently lost. Maine, like other states, established an agency to process these disputes and perform other administrative duties. Disputes were simpler. Injured workers rarely had lawyers. Expensive, long term, and medically complicated claims, such as carpal tunnel syndrome or back strain, were decades away.

#### **B. Adjudicators as Fact Finders.**

In 1929, the Maine Federation of Labor and an early employer group listed as "Associated Industries" opposed Commissioner William Hall's re-nomination. Testimony from both groups referred to reversals of his decisions by the Maine Supreme Court. This early feature of Maine's system, direct review of decisions by the Supreme Court, still exists today. The Supreme Court decides issues regarding legal interpretation, and does not conduct a whole new trial. In Maine, the state agency adjudicator has historically been the final fact finder.

Until 1993, Commissioners were gubernatorial appointments, subject to confirmation by the legislative committee on judiciary. The need for independence of its quasi-judicial function was one of the reasons why it was established as an independent agency, rather than as a part of a larger administrative department within the executive branch. The smaller scale of state government in 1916 no doubt also played a role.

#### **C. Transition to the Modern Era.**

In 1974, workers' compensation coverage became mandatory. This and other significant changes to the statute were passed without an increase in appropriation for the Industrial Accident Commission. In 1964 insurance carriers reported about \$3 million in direct losses paid. By 1974 that had grown to about \$14 million of direct losses paid. By 1979, direct losses paid by carriers

totaled a little over \$55 million. By 1984, it had grown to almost \$128 million. These figures do not reflect benefits paid through self-insurance. This exponential growth of the system resulted from legislative changes during the late 1970's and set the stage for a series of workers compensation crises that occurred throughout the 1980's and into the early 1990's.

During the early 1970's time limits were removed for both total and partial wage loss benefits. Inflation adjustments were added. The maximum benefit was set at 200% of the state average weekly wage. Also, laws were passed making it easier for injured workers to secure the services of an attorney. The availability of legal representation greatly enhanced an injured worker's likelihood of receiving benefits, especially in a complex case. And, statutory changes and evolving medical knowledge brought a new type of claim into the system. The law no longer required a specific accident. Doctors began to connect injuries such as carpal tunnel syndrome and back problems to work and thus brought these injuries within the coverage of workers' compensation.

Such injuries required benefit payments for longer periods than most accidental injuries. These claims were more likely to involve litigation. Over the course of a decade, rising costs quickly transformed workers compensation into a contentious political issue in the late 1980's and early 1990's.

In 1980, Commissioners became full-time and an informal conference process was added to attempt to resolve disputes early in the claim cycle, before a formal hearing.

Additionally, regional offices were established in Portland, Lewiston, Bangor, Augusta, and Caribou, supported by the central administrative office in Augusta.

In 1987, three full-time Commissioners were added, bringing the total to 11, in addition to the Chair. Today, the Board has nine Hearing Officers.

The workers' compensation environment of the 1980's and early 1990's was an extraordinary time in Maine's political history. Contentious legislative sessions regarding workers' compensation occurred in 1982, 1985, 1987, 1991, and 1992. In 1991, then Governor John McKernan tied his veto of the State Budget to changes in the workers' compensation statute. State Government was shut down for about three weeks.

In 1992, a Blue Ribbon Commission made a series of recommendations which were ultimately enacted. Inflation adjustments for both partial and total benefits were eliminated. The maximum benefit was set at 90% of state average weekly wage. A limit of 260 weeks of benefits was established for partial disability. These changes represented substantial reductions in benefits for injured workers, particularly those with long term disabilities. Additionally, the section of the statute concerning access to legal representation was changed making it more difficult for injured workers to secure the services of private attorneys.

Maine Employers' Mutual Insurance Company was established. It replaced the assigned risk pool and offered a permanent source of coverage. Despite differing views on the nature of the

problems within the preceding and current system, virtually all observers agree that MEMIC has played a critical role in stabilizing the workers' compensation environment in Maine.

Based on the recommendation of the Blue Ribbon Commission, the Workers' Compensation Board was created directly involving labor and management in the administration of the State agency.

The Board of Directors originally consisted of four Labor members and four Management members, appointed by the Governor based on nomination lists submitted by the Maine AFL-CIO and Maine Chamber of Commerce. The eight Directors hired an Executive Director to run the agency. In 2004 legislation was enacted to reduce the Board to three Labor Directors and three Management members. The Executive Director became a gubernatorial appointment, confirmed by the legislative committee on Labor, for a term concurrent with the Governor.

The Board of Directors appoints Hearing Officers to adjudicate Formal Hearings. And, a two step process replaced informal conferences: troubleshooting and mediation.

In 1997, legislation was enacted which provided more structure to case monitoring operations of the Board and created the MAE program. Also in 1997, a worker advocate program, begun by the Board, was expanded by the Legislature.

In terms of both regulatory and dispute resolution operations the Board has experienced significant accomplishments. In terms of its traditional operation, dispute resolution, the Board can show an efficient informal process. Between troubleshooting and mediation, approximately 75% of initial disputes are resolved within 80 days from the date a denial is filed. An efficient formal hearing process that had reduced timelines to an acceptable 7.3 months for processing cases in 2000. Gridlock by the Board of Directors regarding appointment of Hearing Officers occurred in 2003 and 2004, resulting in slightly longer time frames at the formal level, about 10.5 months in 2004. The problem was exacerbated by the Law Court decision in *Lydon v. Sprinkler Systems* significantly reducing the number of independent medical examiners (IME) from 30 to 11. Although the gridlock of the appointment of hearing officers has been broken, the IME problem persists, resulting in higher timeframes at formal hearing.

In an apples to apples comparison, matching the complexity of the dispute and the type of litigation, the Board's average time frame of about ten months for formal hearings is rapid, compared to other states, and especially if compared to court systems for comparable personal injury cases.

The agency was criticized for not doing more with its data gathering and regulatory operations during the late 1980's and early 1990's. But the benefit of a relational database installed in 1996, and a modern programming language, the agency is making progress. Filings of first reports and first payment documents are systematically tracked. Significant administrative penalties have been pursued in several cases. The computer applications and the abuse unit are doing a better job of identifying employers, typically small employers, with no coverage. No coverage hearings are regularly scheduled. The Board has mandated the electronic filing of First Reports with an effective date of July 1, 2005. The Board has also mandated the electronic filing of denials, with

an effective date of April through June 2006, and for payments, with an effective date of April through June 2007.

During the late 1990's, the Board of Directors began to deadlock on significant issues such as the appointment of Hearing Officers, the adjustments to the benefit structure under section 213, and the agency budget. By 2002, this had become a matter of Legislative concern. Finally, in 2004, legislation was proposed by Governor Baldacci and enacted to make the Board's Executive Director a tie-breaking member of the Board and its Chair. The Executive Director became a gubernatorial appointment, subject to confirmation by the legislative Committee on Labor, serving at the pleasure of the Governor. Although it will take time to fully evaluate the new arrangement, clearly gridlock due to tie votes is no longer an issue, all issues which gridlocked the Board have been acted upon and the Executive Director has cast a deciding vote in numerous matters. However, the objective is to attain increased cooperation between the Labor and Management caucuses.

### **3. DISPUTE RESOLUTION**

#### **I. INTRODUCTION.**

The Workers' Compensation Board has regional offices throughout the State, in Caribou, Bangor, Augusta, Lewiston and Portland that handle dispute resolution functions. The regional offices handle troubleshooting, mediation and formal hearings.

#### **II. THREE TIERS OF DISPUTE RESOLUTION.**

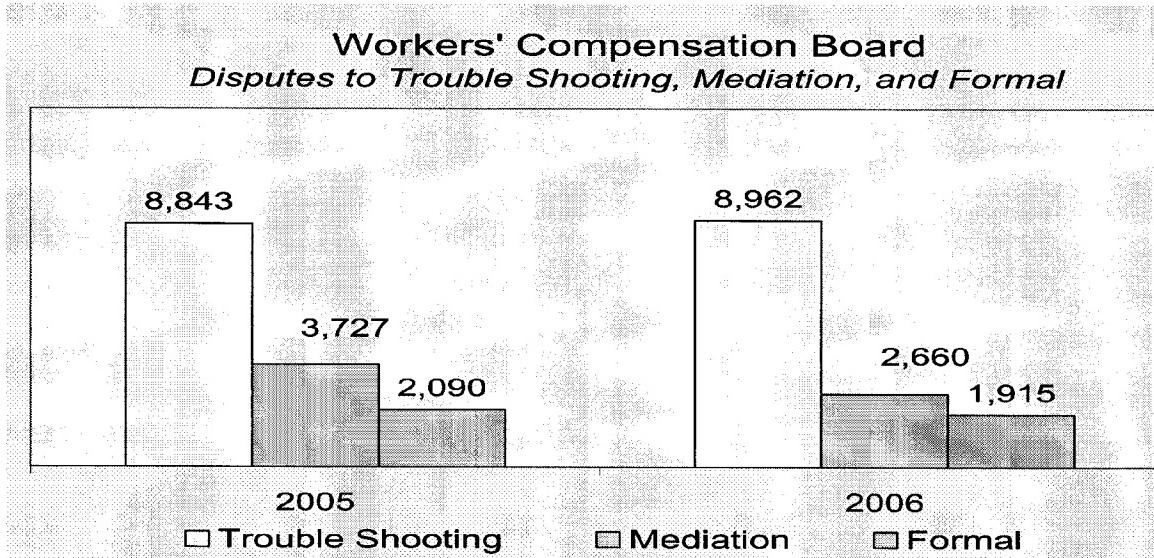
On January 1, 1993, Title 39, which contained the Workers' Compensation Act of 1991 and all prior workers' compensation acts, was repealed and replaced with Title 39-A, the Workers' Compensation Act of 1992. The new Title 39-A created a three tiered dispute resolution process.

First, at the troubleshooting stage, a claims resolution specialist informally attempts to resolve disputes by contacting the employer and the employee and identifying the issues. Many times, additional information, often medical reports, must be obtained in order to discuss possible resolutions. If a resolution of the dispute is not reached after reviewing the necessary information, the claim is referred to mediation.

Second, at the mediation stage, a case is scheduled before one of the Board's mediators. The parties attend the mediation at a regional office or through teleconference. At mediation, the employee, the employer, the insurance adjuster and any employee or employer representatives such as attorneys or advocates meet with the mediator in an attempt to reach a voluntary resolution of the claim. The mediator requests each party to state its position and tries to find common ground. At times, the mediator meets with each side separately to sort out the issues. If the case is resolved at mediation, the mediator writes out the terms of the agreement, which is signed by the parties. If the case is not resolved at mediation, it is referred for formal hearing.

Third, at the formal hearing stage, the parties are required to exchange information and medical reports and answer specific questions that pertain to the claim. After the information has been exchanged, the parties file with the Board a "Joint Scheduling Memorandum," which lists the witnesses who will testify and estimates the time needed for hearing. At the hearing, witnesses for both sides testify and evidence is submitted. In most cases, the parties are represented either by an attorney or a worker advocate. Following the hearing, position papers are submitted and the hearing officer issues a decision.

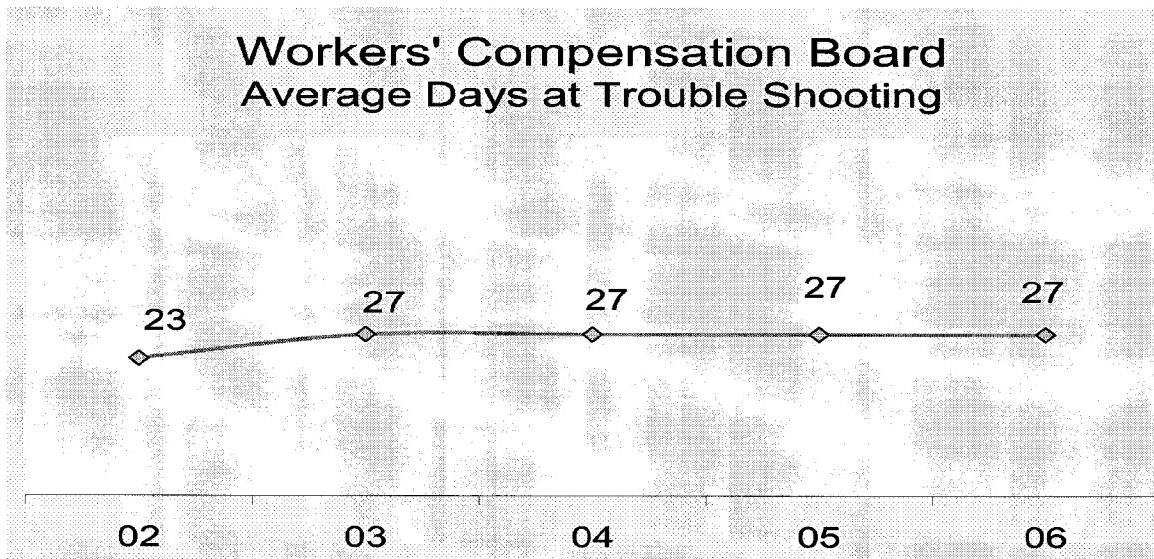
The number of cases resolved at each phase for the years 2005 and 2006 is illustrated in the chart below:



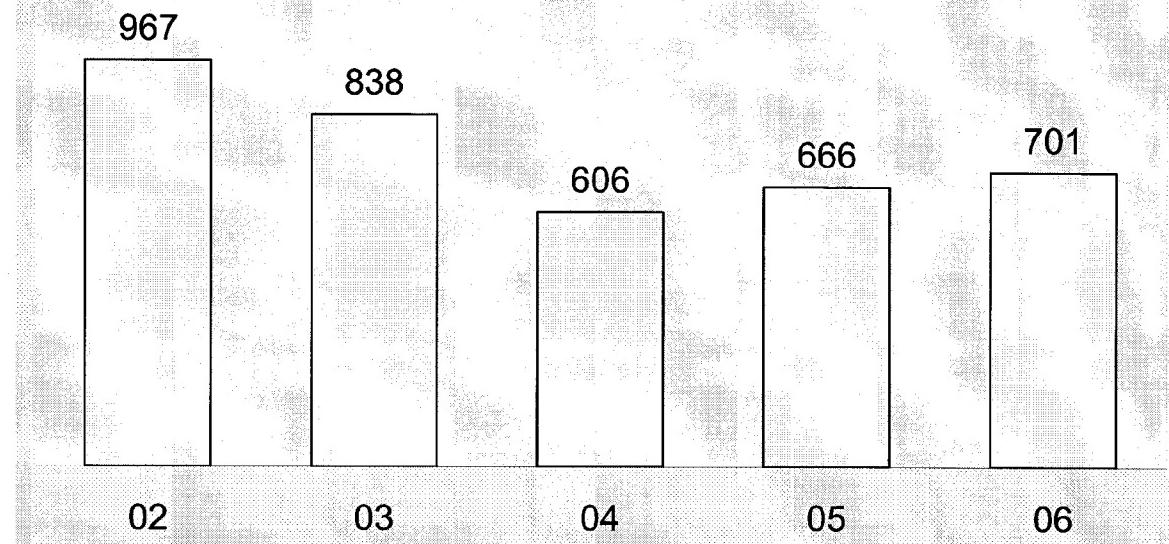
It is worth noting that approximately half of the cases that get to troubleshooting are resolved and half of the remaining cases are resolved at mediation. The remaining cases are resolved at the formal hearing level.

### III. TROUBLESHOOTING STATISTICAL SUMMARY

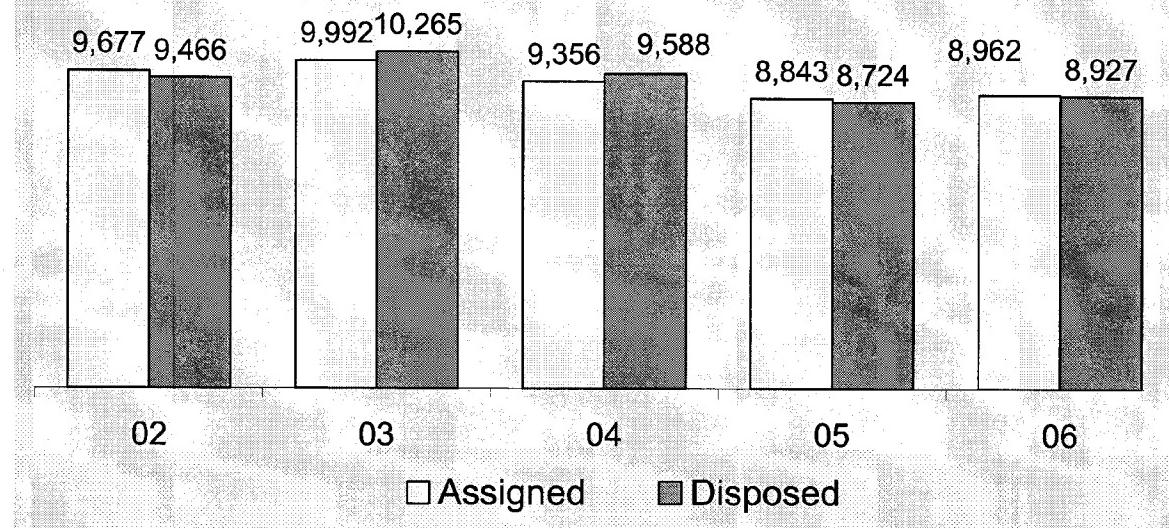
The following charts illustrate the number of days that cases are held at Troubleshooting, the number of cases pending and the number of filings and dispositions at that level.



**Workers' Compensation Board**  
**Cases Pending at Trouble Shooting as of Dec 31st**



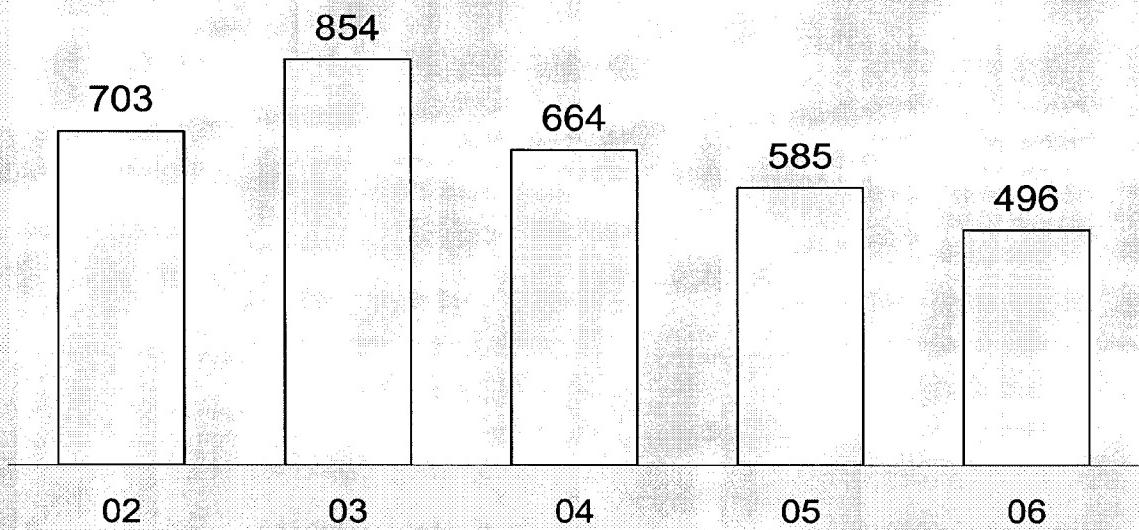
**Workers' Compensation Board**  
**Filings and Dispositions at Trouble Shooting**



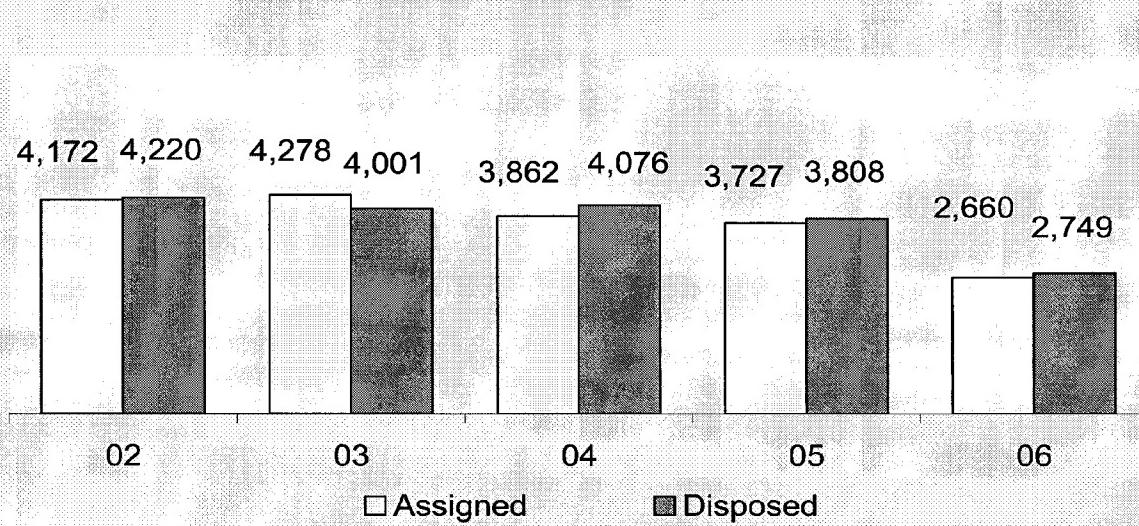
#### IV. MEDIATION STATISTICAL SUMMARY.

The following charts illustrate the number of cases pending at Mediation, the number of filings and dispositions at that level, and average timeframes.

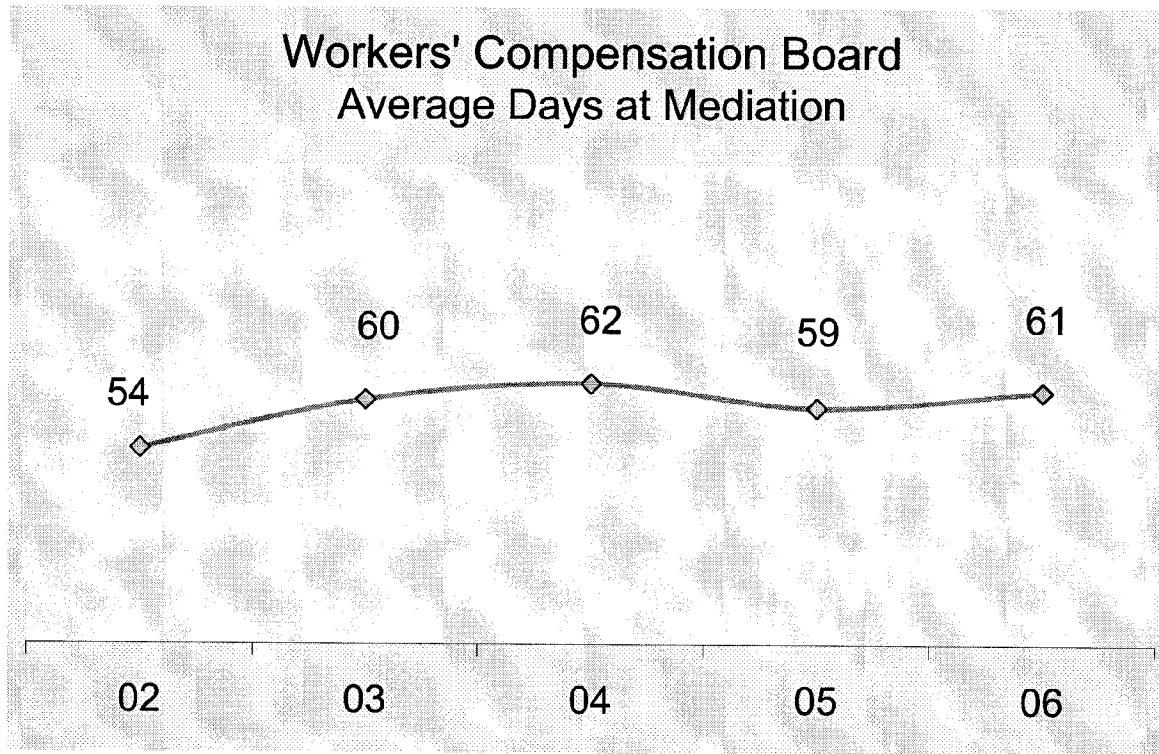
**Workers' Compensation Board**  
Cases Pending at Mediation as of Dec 31st



**Workers' Compensation Board**  
*Filings and Dispositions at Mediation*



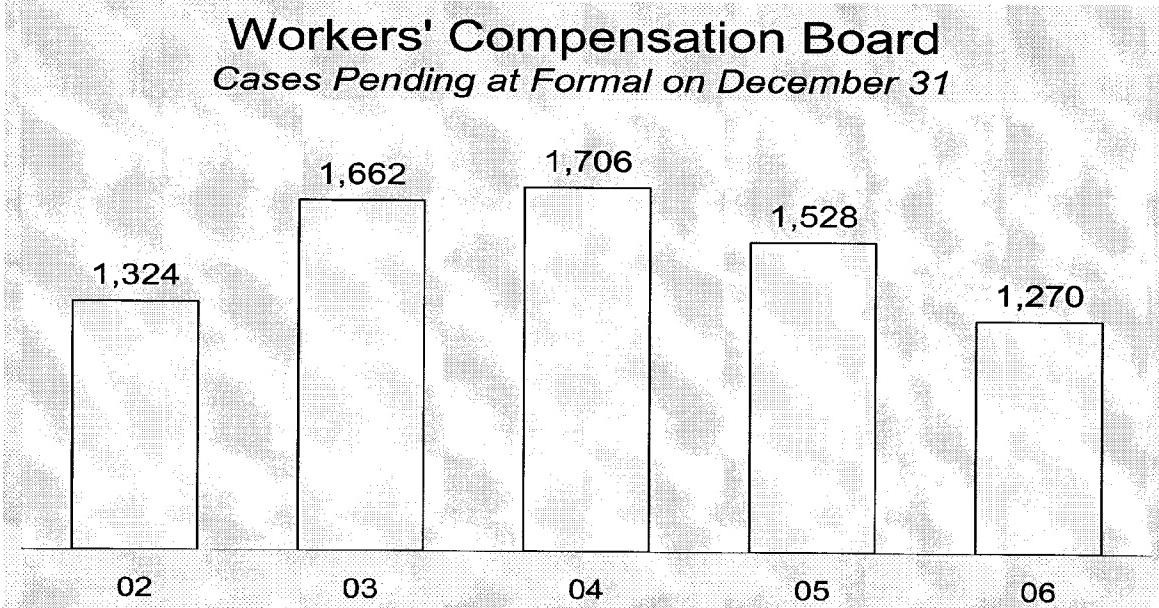
## Workers' Compensation Board Average Days at Mediation



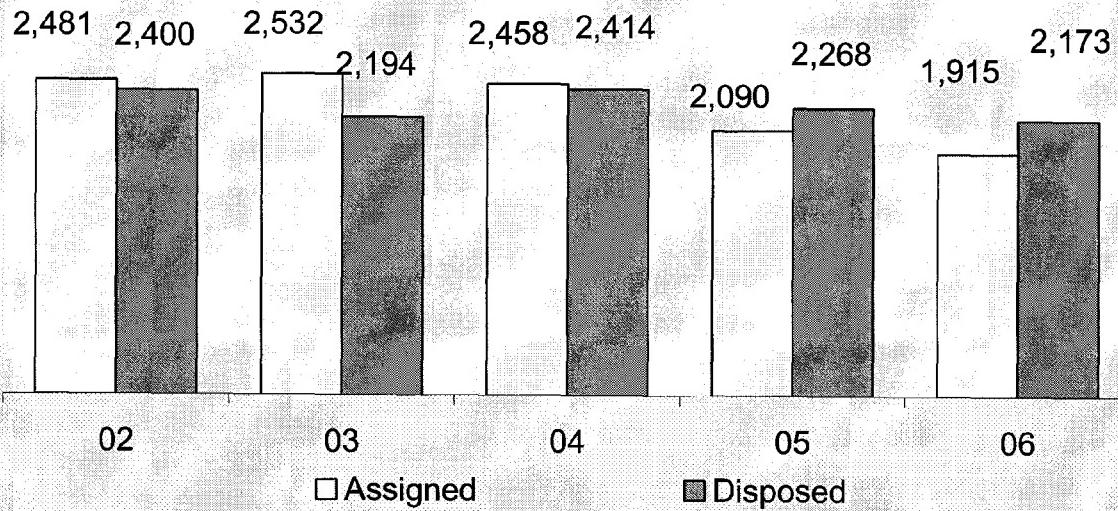
## V. FORMAL HEARING STATISTICAL SUMMARY.

The following charts illustrate the number of cases pending at the formal level, filings and dispositions, and average timeframes.

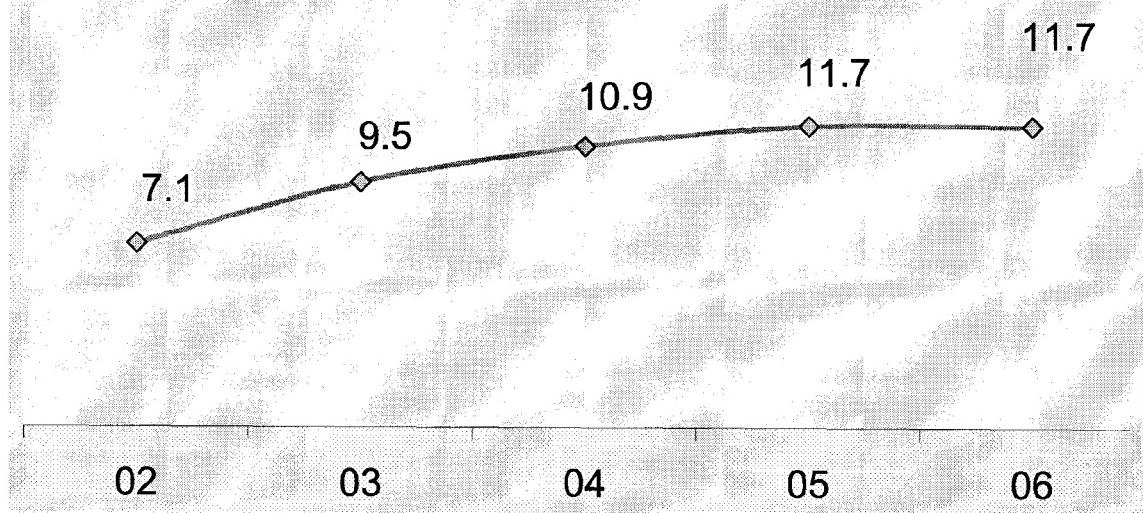
### Workers' Compensation Board *Cases Pending at Formal on December 31*



## Workers' Compensation Board *Filings and Dispositions at Formal*



## Workers' Compensation Board Average Months Formal Hearing Decisions



## **VI. CONCLUSION.**

An increase of cases and the termination of two hearing officers, pursuant to *D'Amato v. Sappi Paper*, have resulted in higher caseloads and an increase in the time at formal hearing. In October of 2003, the Board replaced two hearing officers with two temporary hearing officers. In September 2004, the Board appointed two hearing officers to three-year terms. The Board currently has a full complement of hearing officers (9). Hearing officer terms have been lengthened from three to seven years. Seven hearing officers have been appointed to seven year terms.

In the case of *Lydon v. Sprinkler Systems*, the Law Court held that doctors who had performed a Section 207 examination within the prior 52 weeks were not eligible to render independent medical examinations pursuant to Section 312. The decision reduced the Board's IME list from 30 to 14 doctors, resulting in significant delays to the formal hearing process. Since then, the lists has been expanded to 20 doctors, but delays at formal hearing level will persist until the number of IMEs reaches an acceptable level or the statute is amended. The Workers' Compensation Board is considering legislation to improve the IME process.

## **4. OFFICE OF MONITORING, AUDIT, AND ENFORCEMENT**

In 1997, the Maine Legislature, with the Governor's support, enacted Public Law 1997, Chapter 486 to establish the Office of Monitoring, Audit, and Enforcement (MAE). The basic goals of this office are to (1) provide timely and reliable data to policymakers; (2) monitor and audit payments and filings; and (3) identify insurers, self-administered employers, and third-party administrators (collectively "insurers") that are not complying with minimum standards.

As part of the monitoring program, the Board identifies employers that do not have required coverage and identifies First Reports of Injury that are filed late. Audits are being conducted pursuant to a yearly schedule. The Board's Abuse Investigation Unit provides an enforcement mechanism when violations of the Workers' Compensation Act are identified and cannot be resolved through voluntary consent.

### **Monitoring**

A key component of the monitoring program is the production of Quarterly Compliance Reports. These reports measure, on a system-wide and individual basis, the timeliness of Initial Indemnity Payments, the filing of Memoranda of Payment and the timeliness of First Reports of Injury filings.

To ensure the accuracy of the Quarterly Compliance Reports, a Pilot Project was undertaken in May 1997. The goal of the Pilot Project was to: (1) measure the Board's data collection and reporting capabilities; (2) report on the performance of insurers; and (3) let all interested parties know what to expect from Quarterly Compliance Reports. These components were further modified by the Board when the Board made the following motion:

On June 17, 2003 the Workers' Compensation Board of Directors unanimously passed the following motion:

MOVE to implement the NOC Pilot Project to provide for the reporting of the number, timeliness and percent of initial indemnity claims denied (NOCs) in the compliance reports of 2004.

This performance indicator was made a permanent part of the Compliance Reports by the following Board Action:

On November 22, 2005, the Workers' Compensation Board of Directors passed the following motion in a majority vote:

MOVE to implement the reporting of the number, timeliness and the percent of initial indemnity claims denied (NOC's) in the quarterly and annual compliance reports.

Upon approval of the First Quarter 2004 Quarterly Compliance Report, the Board directed that the number and timeliness of NOCs be reported in the Quarterly Compliance Reports of 2004 and the percent of initial indemnity claims denied be detailed in the Annual Compliance Report.

The 2005 Quarterly Compliance Reports were unanimously accepted by the Workers' Compensation Board. This annual report shows a dramatic improvement in the performance of insurers since the Pilot Project (see Tables 2 and 3). This improvement will help the Board reduce the number of claims that are litigated and result in faster and more accurate payment of lost time benefits.

1. 2005 Annual Compliance Report Overview.

A. Lost Time First Reports.

14,989 Lost Time First Reports were received by the MWCB in 2005. This represents 586 fewer reports than in 2004 and 1,373 fewer than in 2003.

86% (86.12%) were filed within 7 days. 90% (90.20%) were filed within 10 days.

B. Payments of Initial Indemnity Benefit.

87% (86.59%) of initial indemnity benefits were paid within 14 days. This is the highest annual compliance the industry has achieved to date. The MWCB Benchmark is 80%.

Continued focus on poor compliance carriers in 2005 played a large part in increasing this compliance performance by just over 1% compared to 2004.

C. Memoranda of Payment Filed Within 17 Days.

84% (83.93%) of all Memoranda of Payment were filed within 17 days. The MWCB Benchmark is 75%. The insurance community exceeded this benchmark by nearly nine percent (8.93%).

D. Notices of Controversy.

On June 17, 2003 the Workers' Compensation Board of Directors unanimously passed the following motion:

MOVE to implement the NOC Pilot Project to provide for the reporting of the number, timeliness and percent of initial indemnity claims denied (NOCs) in the compliance reports of 2004.

The NOC performance indicator was made a permanent part of the report with the following motion:

On November 22, 2005, the Maine Workers' Compensation Board of Directors approved by majority vote the following motion:

MOVE to implement the reporting, timeliness and the percent of initial indemnity claims denied (NOC's) in the quarterly and annual compliance reports.

92.42% of the Initial Indemnity NOCs filed in 2005 were filed within 0-17 days. This marks the second year that the filing distribution of initial indemnity NOCs appears in the Board's Compliance Reports and the compliance is 1% improvement over 2004.

*Appendix A: Initial Filings Comparison:* Appendix A was generated at the request of the Board of Directors on August 24, 2004.

*Appendix C:* Provides NOC filing timeliness compliance information by insurance groups.

E. Utilization Analysis.

20.15% of all Lost Time First Reports reported NOCs as initial activity, a decline of .38% from the 20.53% in 2004.

39.28% of all Claims for Compensation reported NOCs as initial activity, a decline of 2.21% from the 41.49% of 2004.

F. Adjusting Entity Compliance Comparisons.

(1) Initial Indemnity Benefit Payment (see Chart 18 attached).

Overall Compliance	87%
Standard Insurers	79%
MEMIC	91%
Self-Insured/Self-Admin	93%
Self-Insured/TPA Admin	89%
TPA	78%

(2) MOP Filing (see Chart 19 attached).

Overall Compliance	84%
Standard Insurers	72%
MEMIC	91%
Self-Insured/Self-Admin	89%
Self-Insured/TPA Admin	87%
TPA	77%

(3) Percentage of MOPs filed with the Workers' Compensation Board (see Chart 21 attached).

Standard Insurers	19%
MEMIC	36%
Self-Insured/Self-Admin	18%
Self-Insured/TPA Admin	9%
TPA	18%

## G. Insurance Group Analysis.

Initial Indemnity Payment – Groups Above and Below Benchmark (see Chart 22 attached)

Above – 60%

Below - 40%

MOP Filing - Groups Above and Below Benchmark (see Chart 23 attached)

Above – 55%

Below - 45%

Initial Indemnity Payment – Groups In-State vs. Out-of-State<sup>1</sup>

Compliance for In-State Groups – 90%

Compliance for Out-of-State Groups – 75%

### 2. Corrective Action Plans (CAPs)

The following insurance groups have had Corrective Action Plans (CAPs) in place for some period of time. Corrective Action Plans are implemented for insurers and self-insured employers with chronic poor compliance and filing procedures. These plans have improved the performance of many of these carriers.

<u>Insurer</u>	<u>Market Share by Premium Written</u>
A. Royal & Sunalliance	4.70%
B. St. Paul/Travelers Insurance	2.75%
C. CNA Insurance Group	1.01%
D. Chubb & Son Insurance	0.35%
E. Ace/ESIS Insurance Group	0.01%
F. Gallagher Bassett Claims Services	NA-TPA
G. Crawford & Company	NA-TPA
H. Cambridge Integrated Services	NA-TPA
I. Hartford/Specialty Risk Services	Not Available
J. Georgia Pacific	Not Available

Elements of the Corrective Action Plans are reviewed and updated each quarter to track compliance changes and ensure that the elements of the Corrective Action Plan are being met.

Compliance information on individual insurance carriers, third-party administrators, and self-administered employers for the four quarters of 2005 is listed on the Board's website:  
[www.maine.gov/wcb/](http://www.maine.gov/wcb/)

<sup>1</sup> An out-of-state insurance group has its main indemnity claims processing location outside of Maine and provides a mailing address for the reconciliation report that is outside of Maine. An in-state insurance group has its main indemnity claims processing location in Maine and provides a mailing address for the reconciliation report that is in Maine.

**Table 1****2005 Quarterly Compliance Reports**

	First Quarter		Second Quarter		Third Quarter		Fourth Quarter	
	7 Days	10 Days	7 Days	10 Days	7 Days	10 Days	7 Days	10 Days
First Reports of Injury Received Within:	87.50%	91.23%	86.51%	90.09%	84.18%	88.52%	85.61%	90.75%
Initial Indemnity Payments Made Within 14 Days	85.93%		86.08%		85.66%		88.68%	
Memoranda of Payment Received Within 17 Days	83.03%		83.61%		82.98%		86.96%	
Notices of Controversy Received Within 17 Days	93.58%		90.98%		91.91%		90.82%	

Static results based upon data received by the deadline for each quarter.

**Table 2****Annual Compliance**

	Pilot Project 1997	1999	2000	2001	2002	2003	2004	2005
First Reports of Injury Received Within 7 Days	36.74%	69.20%	78.33%	79.71%	81.73%	82.43%	85.70%	86.12%
Initial Indemnity Payments Made Within 14 Days	59.39%	79.35%	80.26%	82.79%	85.27%	85.56%	85.30%	86.59%
Memoranda of Payment Received Within 17 Days	56.78%	75.14%	74.62%	77.08%	80.78%	81.87%	82.81%	83.93%
Notices of Controversy Received Within 17 Days							91.43%	92.42%

Based on sample data collected for Pilot Project of 1997

Total population data received by March 30 after each calendar year is complete.

**Table 3****Percentage Change Over Time**

	Since Pilot Project 1997		Since 1998	Since 2000	Since 2001	Since 2002	Since 2003	Since 2004
First Reports of Injury Received Within 7 Days	134.40%		24.45%	9.95%	8.04%	5.37%	4.48%	0.49%
Initial Indemnity Payments Made Within 14 Days	45.80%		9.12%	7.89%	4.59%	1.55%	1.20%	1.51%
Memoranda of Payment Received Within 17 Days	47.82%		11.70%	12.48%	8.89%	3.90%	2.52%	1.35%

## FIRST REPORTS OF OCCUPATIONAL INJURY OR DISEASE

Chart 1

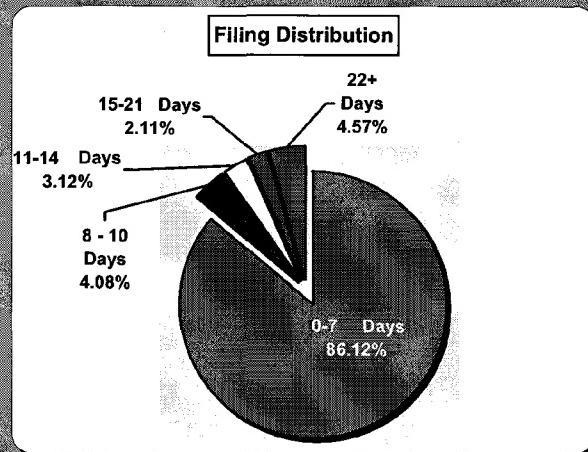


Chart 2

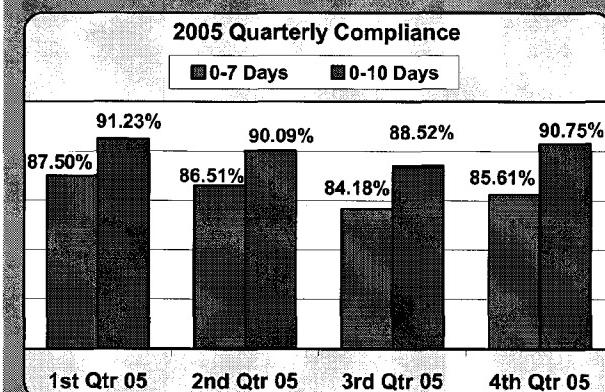


Chart 3

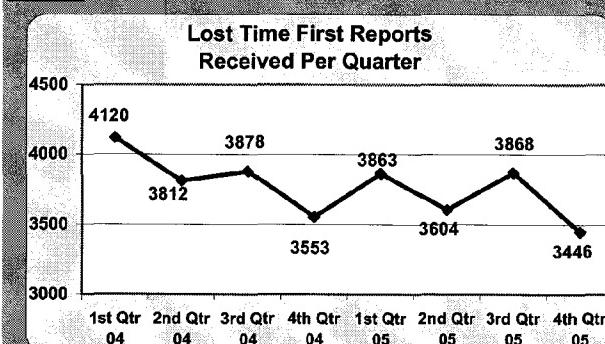


Table 4

### First Reports Received Within:

0-7 Days	12,909	86.12%
8-10 Days	612	4.08%
11-14 Days	467	3.12%
15-21 Days	316	2.11%
22+ Days	685	4.57%
Total	14,989	100%

### Improvement in Lost Time First Report Filing Compliance Continues

In 2005, 14,989 Lost Time First Reports were filed with the MWCB, 586 fewer First Reports of Injury (FROIs) than 2004 and 1,373 fewer than 2003. The compliance rate for timely filing was 86.12% (2004 compliance was 85.7%).

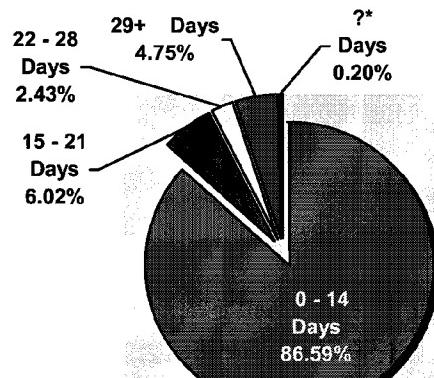
This marks the fifth year in a row that the number of Lost Time First Reports received at the Board declined.

The continued increase in filing compliance and decrease in the number of Lost Time First Reports filed can be attributed to three causes:

- 1) The Board's penalizing of insurers and employers \$100 for late filing of First Reports.
- 2) The Board's Monitoring and Auditing Divisions' identification of insurers with poor filing compliance for Corrective Action Plans (CAPs) and training. The CAPs target breakdowns that cause late reporting.
- 3) The Monitoring Division's reconciliation process that corrects inaccurately submitted First Reports and other Board filings.

## PAYMENTS OF INITIAL INDEMNITY BENEFITS

**Chart 4**



\* indicates compliance could not be measured

**Table 5**

### Initial Payments Made Within:

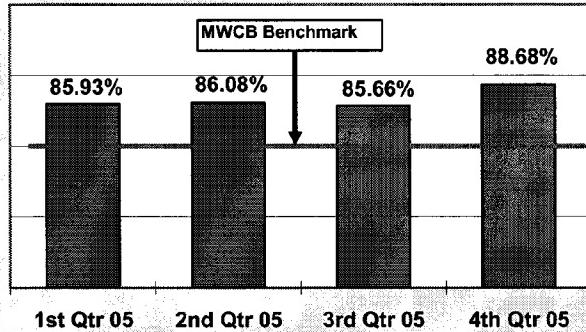
0 - 14 Days	3,810	86.59%
15 - 21 Days	265	6.02%
22 - 28 Days	107	2.43%
29+ Days	209	4.75%
? Days	9	0.20%
<b>Total</b>	<b>4,400</b>	<b>100%</b>

### Maine Improves Again on Compliance Performance of Initial Indemnity Payments

Injured workers in the State of Maine continue to benefit from the high compliance rate of initial indemnity payments. As displayed below, Maine has one of the higher compliance rates in the states that publish this performance indicator.

**Chart 5**

### 2005 Quarterly Compliance



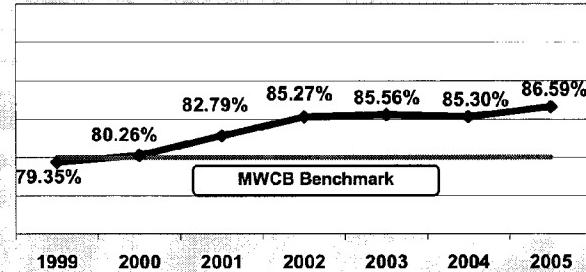
	2003	2004	2005
Maine	86%	85%	87%
Florida	91%	93%	92%
Wisconsin	84%	84%	84%
Minnesota*	86%	86%	86%

\* Indicates "Prompt First Action" which includes measurement of Initial Payment or Initial Denial.

Compliance performance by the insurance community has improved by over 7% since the inception of the Compliance Report and the monitoring program.

**Chart 6**

### Annual Compliance Trends

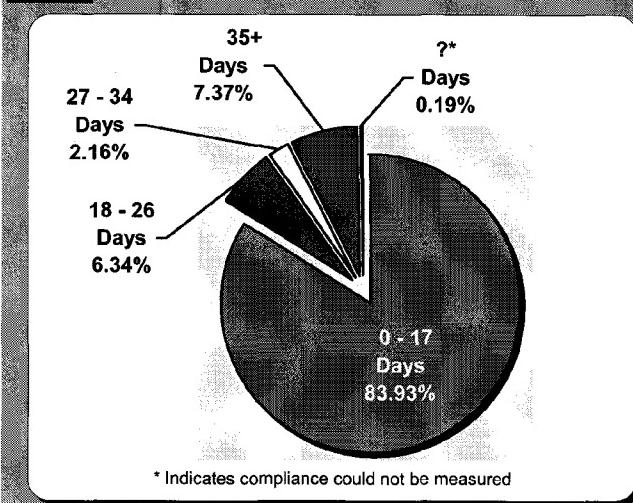


The noted improvement in compliance means that, compared to 1999 compliance figures, over 300 more Maine households are receiving a timely initial indemnity benefit payment.

Workers' compensation research indicates that timely payment of initial benefits is one key factor in helping control the overall cost of a workers' compensation claim.

## MEMORANDA OF PAYMENT

**Chart 7**



**Table 6**

Initial Filing Made Within:	
0 - 17 Days	3,918 83.93%
18 - 26 Days	296 6.34%
27 - 34 Days	101 2.16%
35+ Days	344 7.37%
? Days	9 0.19%
<b>Total</b>	<b>4,668 100.00%</b>

### MOP Filing Climbing Again

The filing of the Memoranda of Payment (MOP) is an important performance indicator for the Maine Workers' Compensation Board.

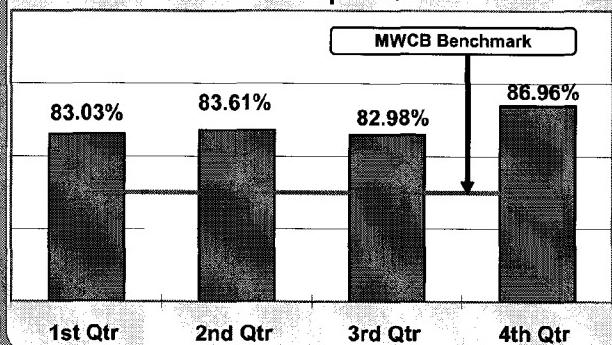
While the filing of the MOP may not have the tangible benefits to the injured employee that the initial indemnity benefit payment may have, the MOP filing provides the Board with an indicator of how well insurers are complying with the administrative requirements of the Workers' Compensation Act. Studies from the Workers' Compensation Research Institute (WCRI) indicate that proper claims administration and timely payment of claims impacts the overall costs of claims and the time it takes for a claim to be processed through the dispute resolution system.

The MOP Filing performance indicator is important to the administration of Maine claims because it allows the Monitoring Division to assess the compliance of individual insurers. It also is used as an indicator for overall forms filing compliance.

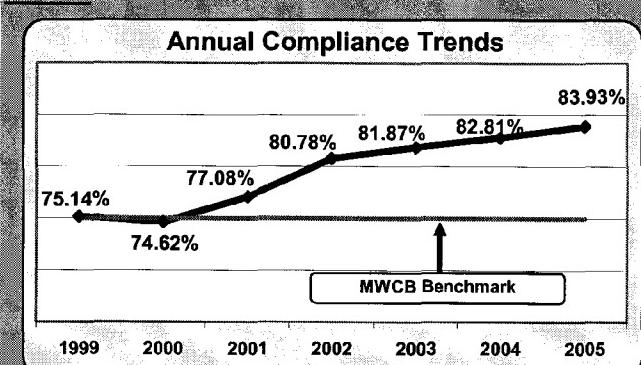
The prompt filing of the initial MOP also gives the Board's Claims Management staff the opportunity to verify that appropriate compensation benefits are being issued.

Continued improvement for this measurement is an indicator that the Board's Corrective Action Plans are working.

### 2005 Compliance

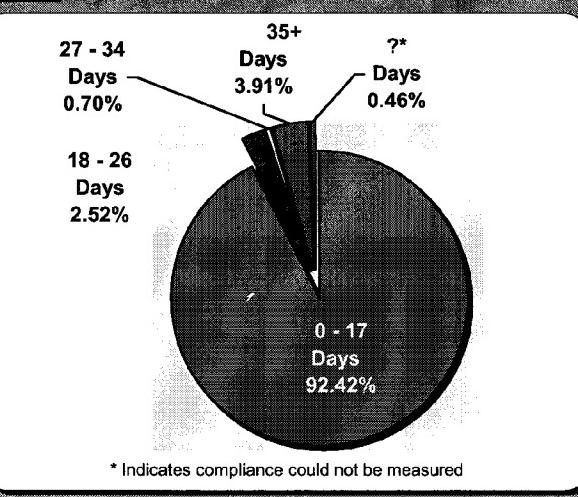


**Chart 9**



## NOTICES OF CONTROVERSY

**Chart 10**

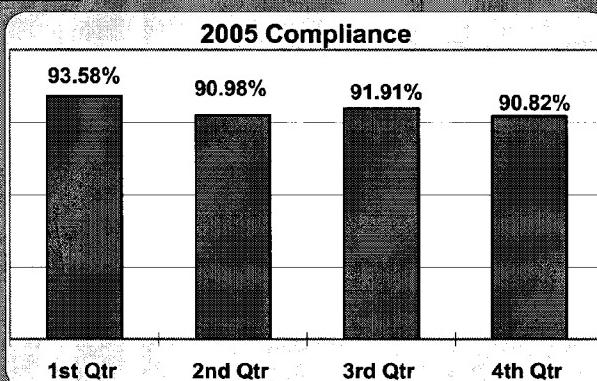


**Table 7**

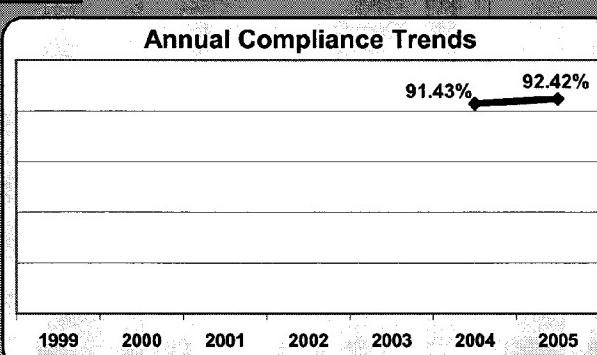
### Initial Indemnity NOCs Within:

0 - 17 Days	2,791	92.42%
18 - 26 Days	76	2.52%
27 - 34 Days	21	0.70%
35+ Days	118	3.91%
? Days	14	0.46%
<b>Total</b>	<b>3,020</b>	<b>100.00%</b>

**Chart 11**



**Chart 12**



### NOC Filing Compliance

Pursuant to a Board Motion on June 17, 2003, the Monitoring Division initiated a Pilot Project to create computer edits and a report format "to provide for the reporting of the number, timeliness and percent of initial indemnity claims denied (NOCs) in the compliance reports of 2004."

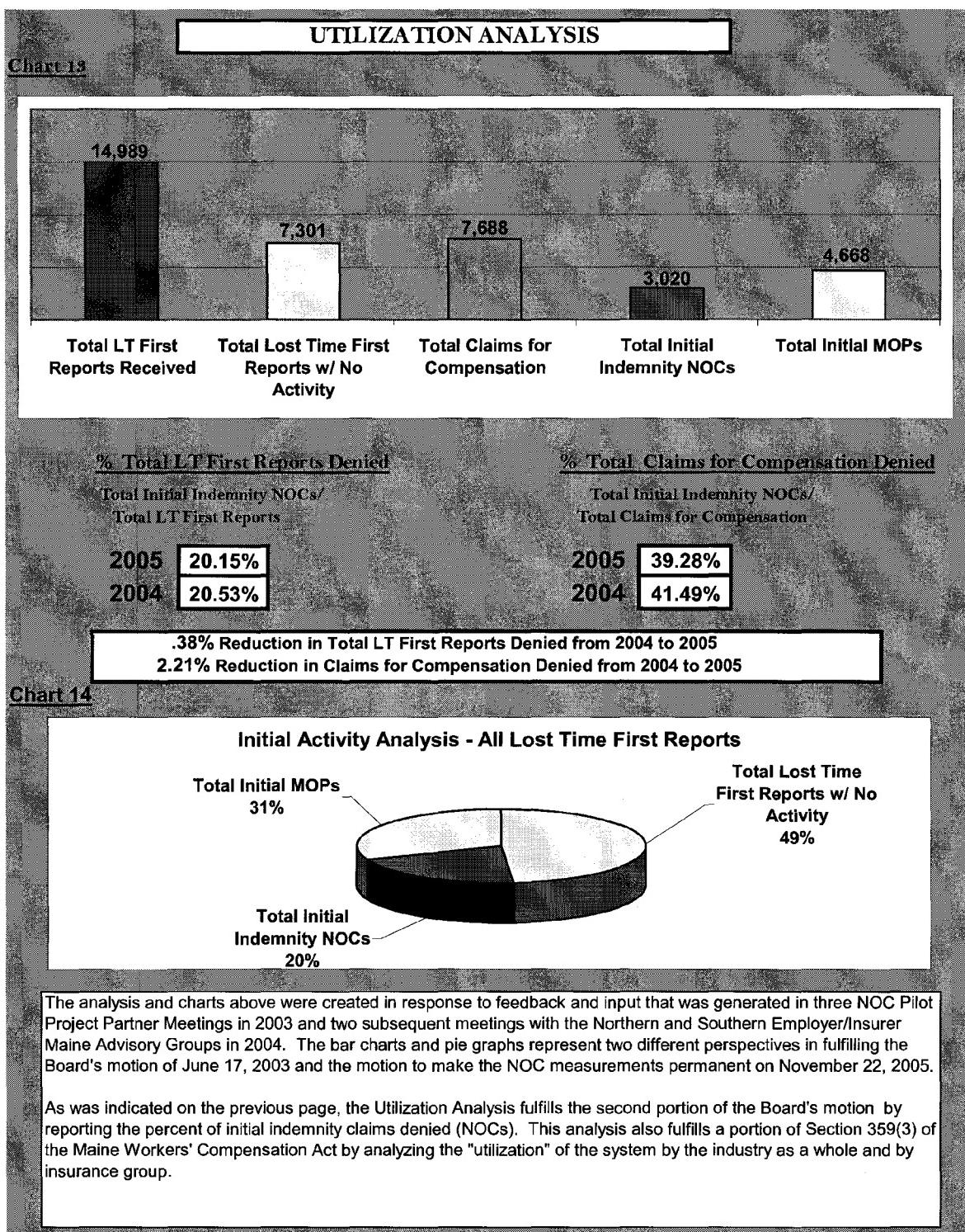
With input and feedback from the insurance community, the Monitoring Division began reporting the number and timeliness of Notices of Controversy in the Quarterly Compliance Reports of 2004.

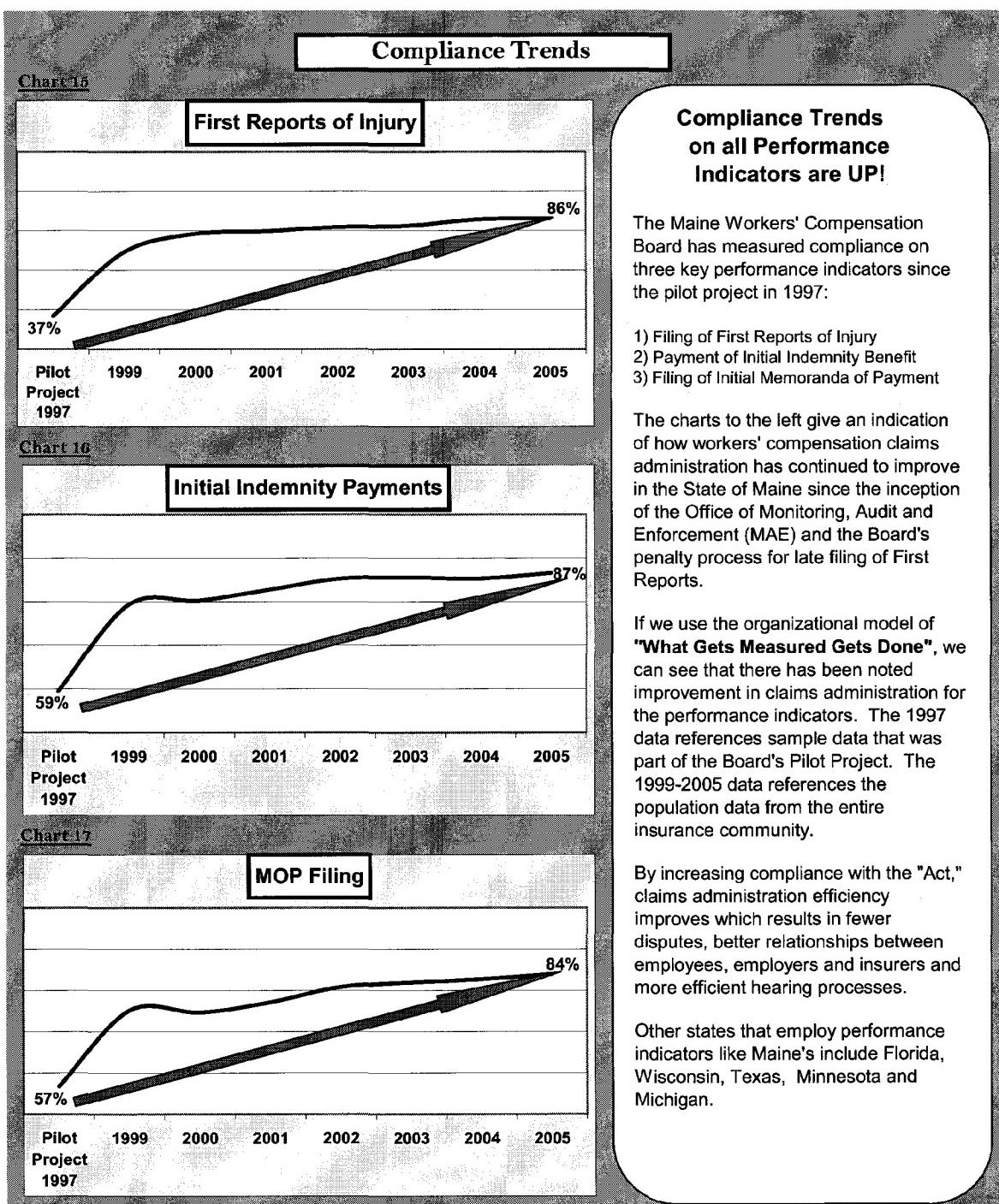
On November 22, 2005, the Maine Workers' Compensation Board of Directors approved by majority vote the following motion:

**"MOVE to implement the reporting, timeliness and the percent of initial indemnity claims denied (NOC's) in the quarterly and annual compliance reports."**

This motion made the NOC compliance measurement applicable to all future quarterly and annual compliance reports.

The NOC form had the highest compliance score for all the performance indicators that the monitoring division measured in the compliance reports of 2005.





### Compliance Trends on all Performance Indicators are UP!

The Maine Workers' Compensation Board has measured compliance on three key performance indicators since the pilot project in 1997:

- 1) Filing of First Reports of Injury
- 2) Payment of Initial Indemnity Benefit
- 3) Filing of Initial Memoranda of Payment

The charts to the left give an indication of how workers' compensation claims administration has continued to improve in the State of Maine since the inception of the Office of Monitoring, Audit and Enforcement (MAE) and the Board's penalty process for late filing of First Reports.

If we use the organizational model of **"What Gets Measured Gets Done"**, we can see that there has been noted improvement in claims administration for the performance indicators. The 1997 data references sample data that was part of the Board's Pilot Project. The 1999-2005 data references the population data from the entire insurance community.

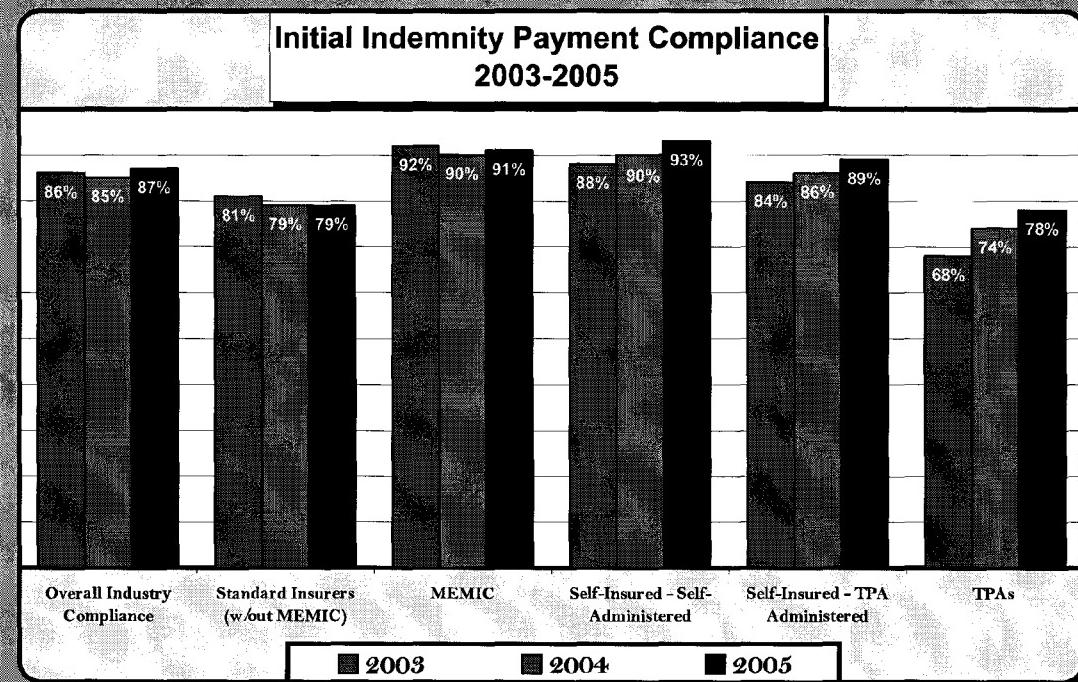
By increasing compliance with the "Act," claims administration efficiency improves which results in fewer disputes, better relationships between employees, employers and insurers and more efficient hearing processes.

Other states that employ performance indicators like Maine's include Florida, Wisconsin, Texas, Minnesota and Michigan.

**Workers' compensation insurance claims can be administered several ways in Maine.**

- There are the customary or "standard" insurance companies like Sentry.
- There is a Legislature created insurance company, Maine Employers' Mutual (MEMIC).
- Employers like Hannaford Bros. can also choose to "self-insure." These self-insureds can choose to adjust their own claims (self-administered) or hire a third-party administrator (TPA) like HRH to adjust their claims (TPA administered).
- Some standard insurers outsource their adjusting work to TPAs as well.

**Chart 18**



#### **Payment of Initial Indemnity Benefits Comparison for Different Types of Workers' Compensation Claims Entities/Adjusters**

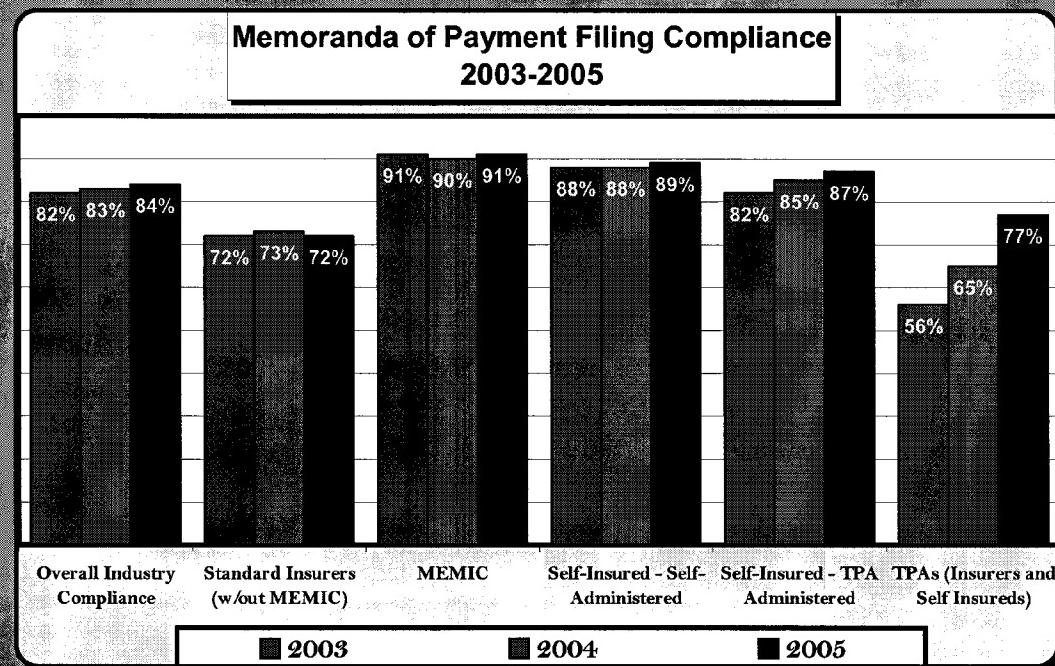
The overall compliance for Initial Indemnity Payment is very high at 87% which is a 2% increase over last year's numbers and the highest annual compliance the industry has ever reached. The continued high compliance indicates that more and more Maine households that depend on their Workers' Compensation Indemnity Payments for basic needs are receiving them in a timely manner.

Third-Party Administrators continue to display the poorest compliance of all claims administrator types. The average TPA performance has improved to 2% below the MWCB Benchmark but many TPAs still display poor performance. As a result of this continued poor compliance, the Monitoring Division implemented Corrective Action Plans with several TPAs in 2004 and 2005. Many other TPAs have been engaged in CAPs as a result of their parent insurers undergoing Audits that revealed "Questionable Claims Handling Practices".

The "Claims Administrator" is the party responsible for the majority of required forms to be filed with the Workers' Compensation Board.

Timely and complete forms filing ensures that every injured employee's workers' compensation claim is administered efficiently and accurately by the claims administrator and by the Maine Workers' Compensation Board. Incomplete, incorrect or late filed forms can lead to delays in an injured worker's case being heard. Many times, an injured employee's dissatisfaction with the administration of their workers' compensation claim can lead to mistrust and frustration with their employer which research has shown to be an indicator in driving the cost of some workers' compensation claims. The Monitoring Division uses MOP filing as an indicator of an insurer's compliance level with claims administration under the Act.

Chart 19



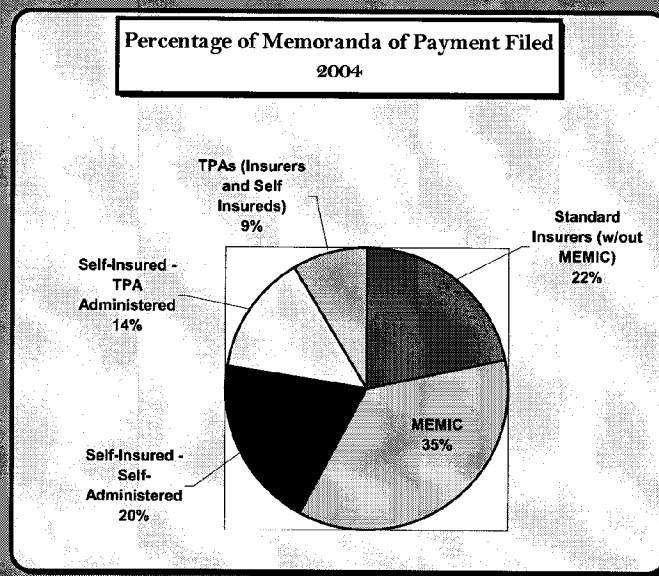
**Filing of initial MOP Compliance for Different Types of  
Workers' Compensation Claims by Entities or Adjusters**

The overall compliance for the filing of the Initial Indemnity Memoranda of Payment rose about one percent in 2005 over 2004. The greatest compliance improvement was among the TPAs, who collectively exceeded the Board's Benchmark for the first time in 2005. Much of this can be attributed to the impact of MWCB Audit Reports and Corrective Action Plans (CAPs). Many of the TPAs were referred to the Bureau of Insurance.

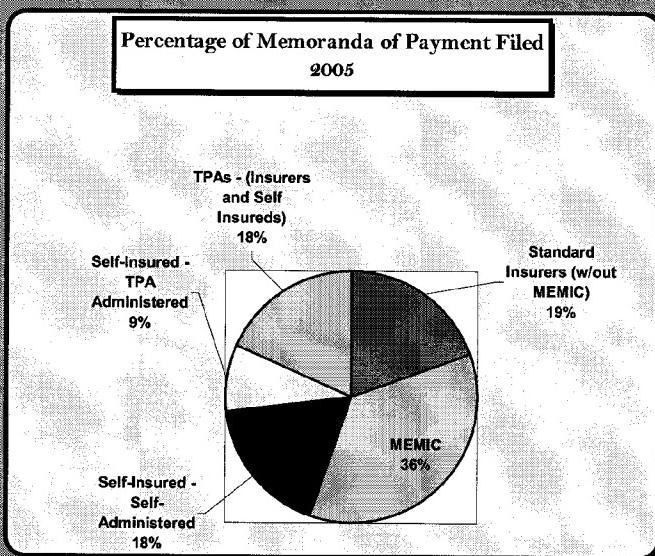
This chart displays the percentage of compliance for each adjusting type in the filing of Memoranda of Payment within the compliant 0-17 days category.

The MWCB Benchmark for this performance indicator is 75%.

**Chart 20**



**Chart 21**



### Percentage of MOPs Filed by Entity Type

This chart displays the percentage of MOPs that each type of adjusting entity filed with the Maine Workers' Compensation Board.

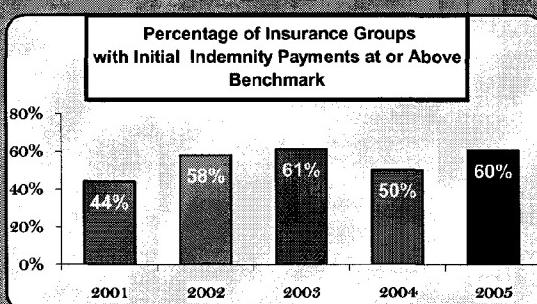
This figure is a representation of the percentage of MOPs filed only and does not indicate an insurer's market share, but rather, it indicates the insurer's claims activity.

In 2005, the Board refined its coverage procedures to identify exactly who the claims administrator for each claim was. This enhancement revealed that Standard Insurers were continuing the trend to write more Large Deductible Policies that were then subcontracted to TPAs.

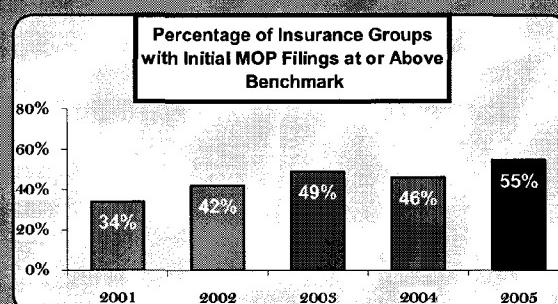
MEMIC filed about 1% more MOPs (36%) in 2004 than 2005.

Standard insurers continued to administer fewer MOPs than in previous years.

The increased percentage of MOPs filed by TPAs doing both Self-Insured and Insurer work is an indication of the "large deductible" issue that was addressed earlier and the trend for TPAs to diversify the type of claims administration they perform. That percentage also reflects the greater accuracy of claims administrator assignments to claims received in 2005.

**Chart 22**Initial Indemnity Payments made within 0-14 days.

MWCB Benchmark = 80%  
Overall Compliance = 86.59%

**Chart 23**Initial MOP Filing made within 0-17 days.

MWCB Benchmark = 75%  
Overall Compliance = 83.93%

**Insurance Group Benchmark Comparisons: Initial Indemnity Benefit Payments and Initial MOP Filing**

As the charts on pages 7 and 8 indicated, overall, the insurance community met the benchmarks for compliance as set by the Maine Workers' Compensation Board.

An "insurance group" is defined in this analysis as the parent company of a number of individual insurance entities. A total of 53 insurance groups filed MOPs with the MWCB in 2005. The number of insurance groups actively filing MOPs decreased from 54 to 53 in 2005. The trend that indicated that fewer and fewer insurers were writing workers' compensation policies in Maine appeared to stabilize in 2005. The practice of larger insurer's writing more "large deductible" policies in Maine and then contracting the administration of the claims to TPAs remained steady.

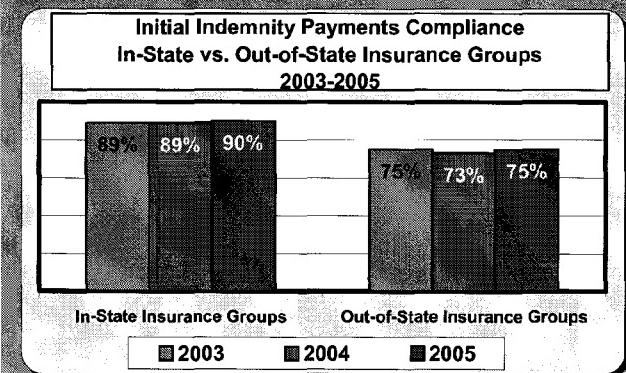
Insurance groups can consist of many different insurance entities. For example, Liberty Mutual Group is comprised of 10 different insurance entities. As the Insurance Group Compliance spreadsheet (Appendix B) indicates, most insurance groups filed only a small number of MOPs.

The majority of initial indemnity payments and MOPs are filed by a small number of insurance groups that generally have high compliance. The data from those groups with high compliance made up the majority of the MOPs measured. As a result, the overall industry compliance was above the MWCB's benchmarks. However, the insurance group charts indicate less than half of the insurance groups met both of the MWCB's benchmarks.

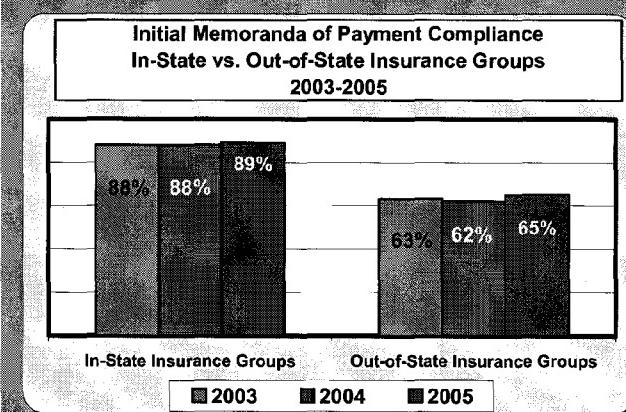
In 2005 there were 20 insurance groups who filed less than 10 MOPs in the year. Of those 20 groups only four, or 20%, met or exceeded both benchmarks. In 2005 there were 33 insurance groups who filed 10 or more MOPs in the year. Of those 33 groups twenty-two, or 67%, met or exceeded both benchmarks.

In 2005, 32 of 53 insurance groups (60%) that filed MOPs met the benchmarks for the payment of initial indemnity benefits. In 2005, 29 of 53 insurance groups (55%) that filed MOPs met the benchmarks for the filing of the initial MOP. This trend should show improvement in 2006 as the Monitoring Division engaged a number of poor compliance carriers in training in preparation for Bureau of Insurance "Market Conduct" Audits throughout 2004 and 2005.

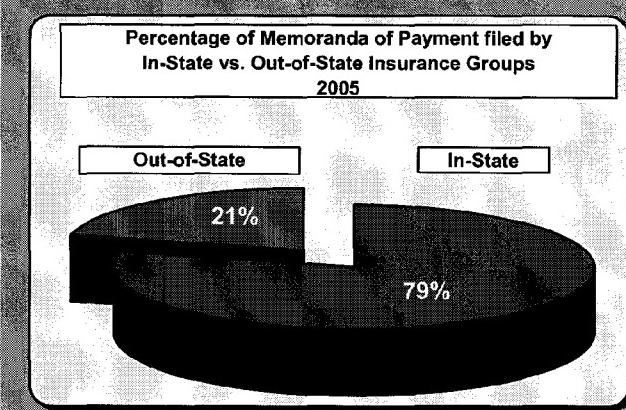
**Chart 24**



**Chart 25**



**Chart 26**



### **In-State vs. Out-of-State Insurance Groups**

Through the Reconciliation Report and the Reconciliation Process, the MWCB can identify those insurance groups processing "in-state" and those processing "out-of-state."

An out-of-state insurance group has its main indemnity claims processing location outside of Maine and provides a mailing address for the Reconciliation Report that is outside of Maine.

An in-state insurance group has its main indemnity claims processing location in Maine and provides a mailing address for the Reconciliation Report that is in Maine.

These charts indicate that in-state insurance groups generally have higher compliance with the MWCB's benchmarks than out-of-state insurance groups.

Even though out-of-state insurance groups filed only 21% of all initial MOPs, their generally lower filing compliance negatively impacted overall initial MOP filing compliance.

Some out-of-state insurance groups have improved their compliance performance by engaging in Corrective Action Plans.

Chart 26 indicates that out-of-state insurance groups filed 21% of all initial indemnity MOPs.

The Office of Monitoring, Audit and Enforcement is currently engaged with many in-state and out-of-state insurance groups in an effort to improve compliance by offering training, education and alternative filing techniques.

In addition, random on-site audits of some out-of-state Insurance Groups resulted in referrals to the Bureau of Insurance.

## AUDIT

The Board conducts compliance audits of insurers, self-insurers and third party administrators to ensure that all obligations under the Workers' Compensation Act are met. The functions of the audit program include, but are not limited to: auditing the timeliness and accuracy of payments; evaluating claims handling practices; determining whether claims are unreasonably contested; and ensuring that all reporting requirements of the Workers' Compensation Board are met.

Since the year 2000, ninety-seven (97) entities have been reviewed by the Audit Division. As a result of these reviews, seventy-eight (78) audit reports have been issued and seventy-two (72) entities have entered into voluntary consent decrees with the Board. In addition to the amounts paid to employees, dependents and service providers for compensation, interest, or other unpaid obligations, \$672,450 in penalties has been paid (see attached spreadsheet). Audit reports and the corresponding consent decrees are available on the Board's website: [www.Maine.gov/wcb/](http://www.Maine.gov/wcb/)

In 2003, the Board successfully prosecuted Hanover Insurance Company for engaging in a pattern of questionable claims handling techniques under §359(2) of the Workers' Compensation Act (see Section 12). Additionally, American International Group, Arch Insurance Group, Atlantic Mutual Insurance Company, Cambridge Integrated Services Group, Claims Management, Inc., CNA Insurance Group, Crawford & Company, ESIS, Gates McDonald, Georgia Pacific, Harleysville Insurance, Hartford Insurance, MEMIC, National Grange Mutual Insurance Company, Royal & SunAlliance Group, The St. Paul Companies, Virginia Surety, and Zurich North America have agreed to Consent Decrees for engaging in a pattern of questionable claims-handling techniques under Section 359(2). The Board filed Certificates of Findings pursuant to this section with the Maine Bureau of Insurance for further action.

The Audit Division has a Complaint for Audit Form and procedure as part of the audit program. This form and procedure allow a complainant to request that the Board investigate a claim to determine if an audit under §359 and/or §360(2) is warranted. Since the form was implemented, one hundred ninety-four (194) Complaints for Audit have been received by the Audit Division. Of these complaints, five (5) are under investigation and seventeen (17) have been included as part of an audit file. The remaining complaints were successfully resolved or dismissed. As a result of these investigations, over \$200,000 in unpaid obligations and over \$135,000 in penalties have been paid.

NAME	RPT DATE	205 (3)	324 (2) EE	324 (2) State	359 (2)	360(1)(A)	360 (1)(B)	360(2)	TOTAL
ACADIA INSURANCE	3/3/2005	1,300					1,650		2,950
AMERICAN INTERNATIONAL GROUP	4/5/2006	20,550		6,150	10,000	3,700	15,300	10,000	65,700
AMERICAN ALTERNATIVE INSURANCE CORPORATION	11/30/2004					100			100
ARCH INSURANCE GROUP	8/16/2005	5,300			10,000		3,400		18,700
ARROW HART/COOPER INDUSTRIES	4/4/2000						800		800
ARROW MUTUAL LIABILITY INSURANCE COMPANY	6/30/2006						100		100
ATLANTIC MUTUAL INSURANCE COMPANY	2/28/2003	1,500			5,000	400	9,400		16,300
BATH IRON WORKS	6/17/2004					250			250
THE BILL JOHNSON AGENCY/FALCON SHOE MANUFACTURING CO.	5/1/2000						200		200
BUCKLER, IRVIN & GRAF, INC.	2/8/2002	550					1,700		2,250
CAMBRIDGE INTEGRATED SERVICES GROUP, INC.	5/31/2005	1,500			10,000	700	4,300		16,500

NAME	RPT DATE	205 (3)	324 (2) EE	324 (2) State	359 (2)	360(1)(A)	360 (1)(B)	360(2)	TOTAL
CENTRAL MAINE POWER COMPANY	10/6/2000						400		400
CHUBB	8/15/2000				3,000	2,500	400		5,900
CHURCH MUTUAL INSURANCE COMPANY	5/26/2005	3,000					700		3,700
CIANBRO CORPORATION	5/11/2000								
	7/31/2006						400		400
CITY OF BANGOR	6/28/2000								
CLAIMS MANAGEMENT, INC. (WAL-MART)	8/3/2006	4,200	4,600		10,000	1,600	12,750		33,150
CLARENDON NATIONAL INSURANCE COMPANY	1/17/2001	1,350				400			1,750
	9/28/2005	2,250				600	700		3,550
CNA INSURANCE GROUP	3/9/2006	6,250			10,000	1,800	3,900		21,950
CRAWFORD & COMPANY	9/11/2002					1,100	500		1,600
	6/13/2005	19,000	2,600	7,800	10,000	300	11,300	10,000	61,000
CRUM & FORSTER	2/28/2002						1,000		1,000
DUNLAP CLAIMS MANAGEMENT SERVICE	9/18/2003					1,400			1,400
ESIS	2/14/2005	15,550			10,000	700	3,000	10,000	39,250

<u>NAME</u>	<u>RPT DATE</u>	<u>205 (3)</u>	<u>324 (2) EE</u>	<u>324 (2) State</u>	<u>359 (2)</u>	<u>360(1)(A)</u>	<u>360 (1)(B)</u>	<u>360(2)</u>	<u>TOTAL</u>
FAIRFIELD INSURANCE COMPANY	4/24/2002	2,050				200	625		2,875
FEDERATED MUTUAL INSURANCE COMPANY	8/31/2006	1,150				200	100		1,450
FILENE'S	3/31/2002					300	200		500
FIREMAN'S FUND INSURANCE COMPANY	6/10/2005						900		900
GAB ROBBINS	1/9/2002	3,000				200	1,400		4,600
GALLAGHER BASSETT SERVICES, INC.	10/15/2002		1,150	1,725		400	1,400		4,675
GATES MCDONALD	10/15/2003				5,000	500	4,100		9,600
GEORGIA PACIFIC	11/30/2004	3,000			10,000	2,500	800		16,300
GREAT AMERICAN INSURANCE GROUP	2/22/2005					800	100		900
GREAT WEST CASUALTY COMPANY	9/6/2006	3,000					200		3,200
GREENWICH INSURANCE COMPANY	7/9/2002					400	200		600
GUARD INSURANCE GROUP	12/9/2002	2,650				1,800	3,100		7,550
HANNAFORD BROTHERS	1/8/2003	3,000				100	1,400		4,500

NAME	RPT DATE	205 (3)	324 (2) EE	324 (2) State	359 (2)	360(1)(A)	360 (1)(B)	360(2)	<u>TOTAL</u>
HANOVER INSURANCE COMPANY	11/7/2000	5,750	1,000	2,100	5,000		10,200		24,050
HARLEYSVILLE INSURANCE	8/10/2005	7,650			4,000		3,100		14,750
HARTFORD INSURANCE	12/8/2004	3,000			5,000		3,000		11,000
LIBERTY MUTUAL GROUP	11/16/1999						1,400		1,400
LUMBER INSURANCE COMPANIES	7/16/1999	6,750					17,300		24,050
MAINE ADJUSTMENT SERVICE	12/18/2003	6,000				925	1,025		7,950
MAINE AUTOMOBILE DEALERS ASSOCIATION	4/7/2005	6,200					800		7,000
MAINE HEALTH CARE ASSOCIATION	3/14/2006	7,500					925		8,425
MAINE MOTOR TRANSPORT ASSOCIATION	6/18/2004					50	475		525
MAINE MUNICIPAL ASSOCIATION	6/20/2001	1,500					500		2,000
MAINE SCHOOL MANAGEMENT ASSOCIATION	7/9/2001						100		100

<u>NAME</u>	<u>RPT DATE</u>	<u>205 (3)</u>	<u>324 (2) EE</u>	<u>324 (2) State</u>	<u>359 (2)</u>	<u>360(1)(A)</u>	<u>360 (1)(B)</u>	<u>360(2)</u>	<u>TOTAL</u>
MAINE WORKERS' COMPENSATION DIVISION	5/31/2001	1,500					900		2,400
MEAD PUBLISHING PAPER DIVISION	9/11/2000								
MEMIC	6/9/2006	4,500	30,800		10,000		3,050		48,350
MITSUI SUMITOMO MARINE MANAGEMENT (U.S.A.), INC.	3/15/2006	2,450				200	1,400		4,050
MORSE PAYSON & NOYES	4/5/2002	600					600		1,200
NATIONAL GRANGE MUTUAL INSURANCE COMPANY	8/10/2005	6,200			6,000		6,100		18,300
NORTHERN GENERAL SERVICES	4/14/2003					100	1,000		1,100
OLD REPUBLIC INSURANCE COMPANY	3/12/2002	1,500				900	700		3,100
ONEBEACON INSURANCE GROUP	2/28/2006					1,500	1,300		2,800
PUBLIC SERVICE MUTUAL INSURANCE COMPANY	1/9/2001					100	100		200

NAME	RPT DATE	205 (3)	324 (2) EE	324 (2) State	359 (2)	360(1)(A)	360 (1)(B)	360(2)	TOTAL
ROYAL & SUNALLIANCE GROUP	11/30/2004	300	100	300	7,500	1,600	4,600		14,400
RSKCO	5/11/2001						800		800
RYDER SERVICES CORPORATION	10/13/2004					300	100		400
SEDGWICK CLAIMS MANAGEMENT	3/14/2001	400					500		900
SENTRY INSURANCE COMPANY	12/12/2001	1,500					1,300		2,800
SOMPO JAPAN INSURANCE COMPANY OF AMERICA	8/31/2006	100					600		700
THE ST. PAUL COMPANIES	5/25/2004	4,050			7,000		2,600		13,650
SYNERNET	12/13/2000						400		400
T.H.E. INSURANCE COMPANY	9/30/2005	400					500		900
TOKIO MARINE MANAGEMENT, INC.	1/9/2001								
TRAVELERS INSURANCE COMPANIES	6/30/1999	15,800				1,400	12,100		29,300
VERIZON	12/28/2005								

<u>NAME</u>	<u>RPT DATE</u>	<u>205 (3)</u>	<u>324 (2) EE</u>	<u>324 (2) State</u>	<u>359 (2)</u>	<u>360(1)(A)</u>	<u>360 (1)(B)</u>	<u>360(2)</u>	<u>TOTAL</u>
VIRGINIA SURETY COMPANY	3/16/2006	2,050		2,250	10,000	500	4,000		18,800
WAUSAU INSURANCE COMPANIES	6/9/2003	3,450					3,800		7,250
THE YASUDA FIRE AND MARINE INSURANCE COMPANY OF AMERICA	3/27/2001	1,500				700	100		2,300
YELLOW TRANSPORTATION	9/20/2004								
YORK CLAIMS SERVICE INC.	3/30/2000	15,000					1,200		16,200
ZURICH NORTH AMERICA	6/28/2005	6,050			10,000	200	8,100		24,350
<b>GRAND TOTALS</b>		<b>211,850</b>	<b>40,250</b>	<b>20,325</b>	<b>157,500</b>	<b>31,425</b>	<b>181,100</b>	<b>30,000</b>	<b>672,450</b>

## **ENFORCEMENT**

The Board's Abuse Investigation Unit handles enforcement of the Maine Workers' Compensation Act. The report of the Abuse Investigation Unit appears at section 12 of the Board's annual report.

## **5. WORKER ADVOCATE PROGRAM**

### **I. INTRODUCTION.**

The Board established a pilot Worker Advocate Program in 1994. Under the pilot program, Advocates represented injured workers at the Mediation stage of dispute resolution. In 1997 legislation expanded the scope of the program to include Formal Hearings. 1998 was the first full year that Advocates represented injured workers at both Mediations and Formal Hearings.

This was a substantial expansion of operations. With only the rarest of exceptions, representing an injured worker in litigation is exponentially more complex. At Mediation there is typically just one meeting and the objective is to see if an agreement can be reached without taking the case to a Formal Hearing. In litigation, there are depositions, joint scheduling memos, motions, position papers, complex medical reports, settlement negotiations, and other legal activities, including analysis of case law.

### **II. HISTORY.**

Prior to 1993, the statute contained a "Prevail" standard. The insurer/employer was required to pay the injured worker's attorney fees if the injured worker prevailed in the dispute. In 1992, the prevail standard was repealed and replaced by language that made the injured worker responsible for their own attorney fees, limited to a maximum of 30% of accrued benefits.

In practice, this made it difficult for an injured worker to obtain an attorney unless it was a serious injury with a substantial amount accrued benefits at stake. The Board implemented the pilot Advocate program in 1994 to provide representation at Mediations for injured workers with less serious claims, who would have difficulty getting a private attorney.

The Legislature expanded this pilot program in 1997 to include litigation at the Formal level. In part, it was an effort to provide legal representation to injured workers. In part, it was also an effort to make the argument for restoring the prevail standard less appealing.

From it's inception in 1998, the Advocate program has received and disposed of about 2,000 cases a year at the Mediation level. Typically, there would be about 320 cases where an Advocate had entered an appearance letter but the Mediation meeting had not been held. With only modest variation, this would typically be about 50% of all cases pending at the Mediation level.

In contrast, there have been substantial year to year differences at the Formal level. At the end of 1998, there were 405 Advocate cases pending at Formal. At the end of 2000, there were 313. At the end of 2003, there were 608. These variations continue if expressed as a percentage of total cases pending at Formal. It has been as low as 25% in 1998 and as high as 37% in 2003.

The annual counts of assignments and dispositions at Formal have also varied. The lowest number of assignments was 597 in 2000. The highest was 920 in 2003.

The Board is reviewing and attempting to upgrade Advocate representation at the Formal level. The variation in annual caseload statistics reflects operational issues beyond normal fluctuation in the Formal caseload.

### **III. DUTIES.**

Workers compensation disputes in Maine are processed through a three stage process: Trouble Shooting, Mediation, and Formal. At Trouble Shooting a Board employee, known as a Claims Resolution Specialist contacts the injured worker, initially by mail. The injured worker must respond. Then, the CRS tries to facilitate a resolution to the problem.

Most disputes are either resolved or forwarded to Mediation within 30 days. If the issue goes to Mediation, the Claims Resolution specialist informs the injured worker about the Advocate program and provides contact information.

The injured worker must follow up with the Advocate program. The Advocate then enters an appearance and the matter proceeds to Mediation. There is a meeting between the parties and an effort is made to reach an agreement without litigation. The usual timeframe at Mediation is about 60 days.

When this is not possible, typically because of the factual and legal complexity of the dispute, the next step is litigation at the Formal level. The Advocates provide legal representation including compiling medical reports preparing the worker for the hearing, taking of direct and cross examination testimony, and filing of position papers at the conclusion of the testimony. The Advocates also, when necessary, attend depositions of medical providers, private investigators, and labor market experts. Eventually, either a decision is issued or the parties agree on a lump sum settlement. The average timeframe is about 12 months, although it can be significantly shorter or longer depending on the complexity of medical evidence and the need for independent medical examinations.

The two informal steps tend to screen out the less serious disputes. For every 100 disputes entering the system, only about 25 reach the formal level. They are usually cases where there is long term incapacity and large amounts of money involved.

Unlike private attorneys, Advocates are expected to represent almost everyone who applies. There are exceptions for cases without merit, however, in practice; there are relatively few cases that meet the criteria for without merit as defined in PL 1999, Chapter 410.

### **IV. CASELOAD STATISTICS.**

As the following tables indicate, utilization of the program has been substantial. Roughly half the injured workers with cases pending at Mediation are represented by a Worker Advocate.

Roughly thirty percent of cases pending at Formal Hearings are represented by Worker Advocates.

## Advocate Cases at Mediation

	Assigned	Cases Disposed	Pending Dec 31st	% of All Pending
1998	1,889	2,021	308	39%
1999	2,342	2,351	299	51%
2000	1,903	1,856	346	52%
2001	2,249	2,247	348	51%
2002	2,113	2,153	308	51%
2003	1,981	1,899	390	46%
2004	1,816	1,969	237	50%
2005	1,915	1,841	311	53%
2006	1,576	1,571	280	56%

## Advocate Cases at Formal Hearings

	Assigned	Cases Disposed	Pending Dec 31st	% Of All Pending
1998	655	444	405	25%
1999	605	645	310	28%
2000	597	594	313	28%
2001	813	784	342	28%
2002	642	682	468	35%
2003	920	780	608	37%
2004	689	810	487	29%
2005	679	714	452	30%
2006	636	723	365	29%

## **V. SUMMARY.**

The Advocate Office has experienced problems expanding its operations to include litigation. Also, litigation requires more paralegal staff than were envisioned in the original legislation. Many Advocates were not attorneys when the law was changed.

Staff turnover has been a consistent issue. Four of the 12 Advocate positions turned over during 2006. Two are currently vacant. The Program Supervisor position also turned over during 2006 and is currently vacant.

The Board is seeking to introduce legislation to increase the number of clerical staff to support Advocates during litigation. Additionally, the proposed legislation upgrades the pay range and qualifications of the position.

Although there will always be a mismatch between the income of an experienced private attorney and state agency staff, the Board is hopeful that the new legislation will enable the Advocate program to be efficient and competitive.

## **6. INDEPENDENT MEDICAL EXAMINATIONS (IMES) /MEDICAL FEE SCHEDULE**

### **I. INDEPENDENT MEDICAL EXAMINATIONS.**

Draft regulations for the implementation of Section 312 of the Workers' Compensation Act of 1992 were first presented to the Board of Directors April 7, 1994, with final approval on January 3, 1996. Section 312 provides, in part, as follows:

**Examiner system.** The board shall develop and implement an independent medical examiner system consistent with the requirements of this section. As part of this system, the board shall, in the exercise of its discretion, create, maintain and periodically validate a list of not more than 50 health care providers that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the board finds most commonly used by injured employees. The board shall establish a fee schedule for services rendered by independent medical examiners and adopt any rules considered necessary to effectuate the purposes of this section.

**Duties.** An independent medical examiner shall render medical findings on the medical condition of an employee and related issues as specified under this section. The independent medical examiner in a case may not be the employee's treating health care provider and may not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid. Nothing in this subsection precludes the selection of a provider authorized to receive reimbursement under section 206 to serve in the capacity of an independent medical examiner. Unless agreed upon by the parties, a physician who has examined an employee at the request of an insurance company, employer or employee in accordance with section 207 during the previous 52 weeks is not eligible to serve as an independent medical examiner.

**Appointment.** If the parties to a dispute cannot agree on an independent medical examiner of their own choosing, the board shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant, including but not limited to disputes that involve the employee's medical condition, improvement or treatment, degree of impairment or ability to return to work.

**Rules.** The board may adopt rules pertaining to the procedures before the independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee to be submitted to the independent medical examiner. The parties shall submit any medical records or other pertinent information to the independent medical examiner. In addition to the review of records and information submitted by the parties, the independent medical

examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties.

**Medical findings; fees.** The independent medical examiner shall submit a written report to the board, the employer and the employee stating the examiner's medical findings on the issues raised by that case and providing a description of findings sufficient to explain the basis of those findings. It is presumed that the employer and employee received the report 3 working days after mailing. The fee for the examination and report must be paid by the employer.

**Weight.** The board shall adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. The board shall state in writing the reasons for not accepting the medical findings of the independent medical examiner.

**Annual review.** The board shall create a review process to oversee on an annual basis the quality of performance and the timeliness of the submission of medical findings by the independent medical examiners.

The Board expanded its Section 312 IME list to include 30 doctors in various occupational specialties. However, on February 12, 2004, the Maine Supreme Judicial Court ruled in *Lydon v. Sprinkler Services, et al.*, that:

“by its plain language, the Legislature has decreed that any physician who has examined *any* employee pursuant to Section 207 within the past year is ineligible to serve as an independent medical examiner.”

As a result of the Law Court’s decision, the Board’s list of examiners was reduced from 30 to 14 doctors, with only one orthopedist and one neurologist, resulting in significant delay in the system. The Board is presently considering a rule to reduce the delays in the process. However, the problem will not be resolved unless more examiners can be added to the list or the process becomes purely voluntary through the agreement of the parties.

Since *Lydon*, the Board has expanded its list to 20 doctors, but, there is still a need for additional orthopedists, neurologists, and physiatrists. Currently, there is a substantial waiting period for examinations with key specialists because of the overwhelming number of cases referred from the Board. The following physicians are currently on the Board’s Section 312 IME list:

*INDEPENDENT MEDICAL EXAMINER LIST*

**ANESTHESIOLOGY/ PAIN  
MANAGEMENT**

HERLAND, Jonathan S., MD  
Penobscot Pain Management  
38 Penn Plaza  
Bangor ME 04401  
Tel: 990-4775

**CHIROPRACTIC**

BALLEW, David M., DC  
Ballew Chiropractic Office  
256 Main Street  
Waterville ME 04901  
Tel: 873-1167

LYNCH, Robert P., DC  
1200 Broadway  
S Portland ME 04106  
Tel: 799-2263

VANDERPLOEG, Douglas A., DC  
157 Main St  
PO Box 1081  
Damariscotta ME 04543  
Tel: 563-8500

**FAM/GEN/INT**

GRIFFITH, William L., MD  
Kennebec Medical Associates  
13 Railroad Square  
Waterville ME 04901  
Tel: 872-6869

SHAW, Peter K., MD  
96 Campus Dr  
Scarborough ME 04102  
Tel: 885-9905

**NEUROLOGY**

BRIDGMAN, Peter, MD  
51 Harpswell Rd, Ste 100  
Brunswick ME 04011  
Tel: 729-7800

SIGSBEE, Bruce, MD  
Penobscot Bay Neurologists  
4 Glen Cove Dr  
Rockport ME 04856  
Tel: 596-0031

**ORTHOPEDIC SURGERY**

CROTHERS III, Omar D., MD  
542 Cumberland Avenue  
Portland ME 04101  
Tel: 773-7768

DONOVAN, Matthew J., MD  
16 Long Sands Rd.,  
York ME 03909  
Tel: 363-6400

**OSTEOPATH**

TRENKLE, Douglas L., DO  
306 Main Street  
Ellsworth ME 04605  
Tel: 667-2202

**OTOLARYNGOLGY**

HAUGHWOUT, Peter J., MD  
7A Everett St  
Brunswick ME 04011  
Tel: 729-4124

**PODIATRY**

MUCA, Eric  
Yarmouth Family Services  
259 Main Street  
Yarmouth ME 04096  
Tel: 874-1488

**PHYSIATRY**

HERZOG, Vincent D.O.  
306 U.S. Rte 1  
Scarborough ME 04074  
Tel: 883-3434

BAMBERGER, Stephan  
11 Medical Ctr. Dr., Ste 2  
Brunswick, ME 04011  
Tel: 725-7854

**PSYCHIATRY**

LOBOZZO, David B., MD  
477 Congress St  
Portland ME 04101  
Tel: 207- 773-1290

WEAR-FINKLE, Deborah J., MD  
PO Box 10  
Lisbon Falls ME 04252  
Tel: 751-8439

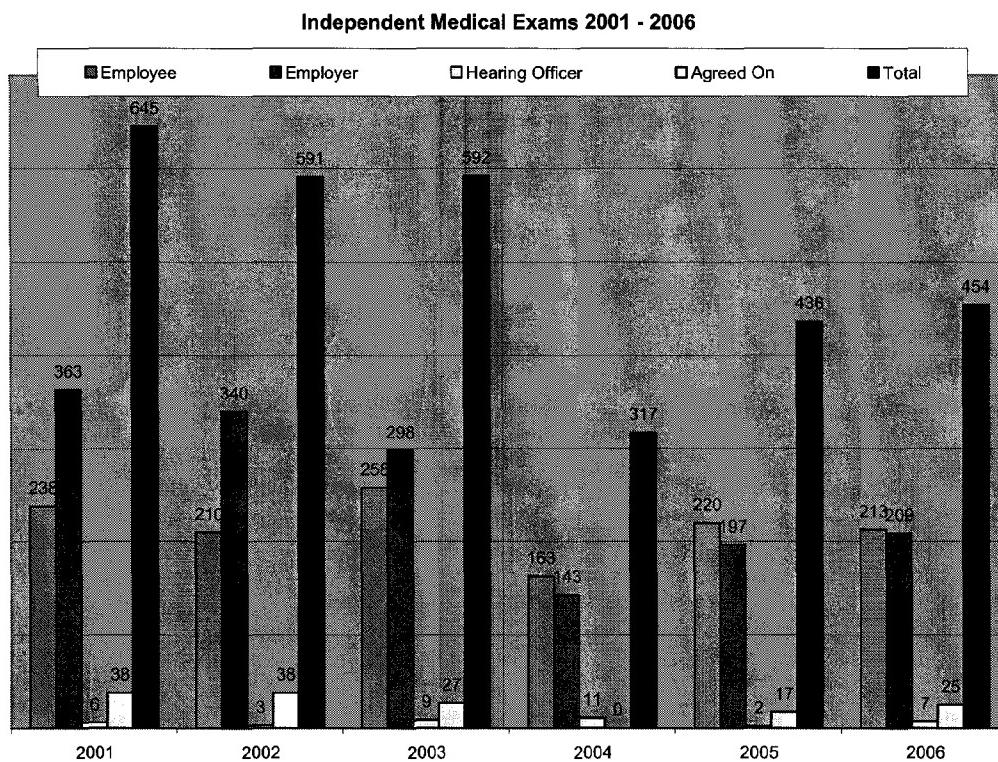
**PSYCHOLOGY**

GINN, Roger, Ph.D.  
205 Ocean Ave  
Portland ME 04103  
Tel: 773-7993

MATRANGA, Jeff, Ph.D.  
30 Chase Avenue  
Waterville ME 04901  
Tel: 872-4100

**PULMONARY**

FUHRMANN, Calvin P., MD  
Kennebunk Medical Center  
24 Portland Rd.  
Kennebunk ME 04043  
Tel: 985-3726



The chart reflects the source of requests for independent medical examinations for 2006.

## **II. MEDICAL FEE SCHEDULE.**

The Board first published a Medical Fee Schedule on April 4, 1994. The Board is required pursuant to Section 209 to adopt rules establishing standards, schedules, and scales of maximum charges for individual services, procedures and courses of treatment. In order to ensure appropriate costs for health care services, the standards are to be adjusted annually to reflect appropriate changes in levels of reimbursement.

In August 1997, the Board adopted the Resource Based Relative Value System (RBRVS) as an efficient method to administer a fee schedule. The fee schedule was revised and updated in 1999, 2001, and 2002.

In 2004, the Board approved a Consensus-Based Rulemaking group to draft amendments to the medical fee schedule. The Committee was comprised of a representative group of interested participants, including the Maine Medical Association, Maine Hospital Association, Maine Osteopathic Association, Maine Chiropractic Association, Chamber of Commerce, MEMIC, Self-Insureds, and two Board Members representing Labor and Management. The Committee met four times but was unable to reach consensus.

On August 22, 2006, the Board voted to adopt the 2005 CPT Codes and RBRVS. The Board will continue to try to reach consensus on issues regarding regulation of inpatient services, ambulatory surgical care, and pharmaceuticals.

The Board is currently in the process of reconvening a consensus based rulemaking group to look at hospital inpatient and ambulatory surgical care centers.

## **7. TECHNOLOGY**

The Board implemented an information system in the mid-1980's. It was primarily used to collect First Reports with little or no functional use beyond the simple collection of data. Next, programs were written to perform rudimentary scheduling of cases for the dispute resolution process and to provide for basic word processing.

Due to numerous problems with hardware reliability and technical support, the hardware and software were replaced by Bull Information Systems. This system lasted a number of years, but subsequently changed to a more functional application. While this was a more mainstream product, the application software was written in a more rigid programming format, making it difficult and time-consuming to utilize data, even though the staff had increased to five information technology professionals.

The increasing need for access to data led a migration effort to a relational database structure in 1995. Unfortunately, the initial database structure had major design flaws that led to corruption of the process and problems with data integrity. In addition, the system did not adequately address the functional needs of the staff.

Following a centralization of information technology by executive order, the Board hired an Agency Technology Officer. From November 1997 through 1998, a major effort was initiated to upgrade the Board's outdated systems, desktop software, networking hardware/software, and communication infrastructure. All 120 desktop systems were replaced, Microsoft Office was installed, e-mail was added to each system, all six office servers were replaced, networking software was upgraded, and all communication lines were upgraded from 56k to T1.

Pursuant to a legislative mandate, a review was conducted to determine whether the computer system was adequate to provide the data for the Board's Compliance Report. It was concluded that the system could not provide the quality assurance and data integrity required for the compliance report. Utilizing the one contract programmer from the Department of Labor at our disposal, work began to rewrite the business application. Normally an effort of this magnitude requires four programmers and approximately two years to complete. Due to limited resources, the time frame for completion is estimated by the end of 2006. This encompasses an analysis and major rewrite of the Claims, Coverage, Regional Offices, Abuse, and MAE Units, with continued enhancements in all areas into the future.

One of the major aspects of the system rewrite is to review current work processes and practices while assuring conformity with statutory rules and regulations. A number of areas were improved leading to significant shifts in staff and resources.

The system rewrite began in the Claims Unit in order to capture First Report data for the Board's Compliance Report. The first Compliance Report was produced in June 1999. At that time no in-

depth workflow analysis or system enhancements for the Claims section was provided. The focus was to get something up fast in order to comply with statutory mandates.

The focus then shifted to the Coverage Unit and migration to the new system was accomplished in December 2000. One of the highlights was the shift to a common employer database with the Bureau of Labor Standards. This change saves considerable time during the analysis phase and provides a method to automatically keep employer information current. Other system changes and workflow enhancements were added to Coverage programs that increased the functionality of the system. System edits and checks were also added to help identify data quality issues.

The next phase dealt with Dispute Resolution and Regional Office functionality. A team representing all facets of the dispute resolution process assisted with the analysis, design, screen building, testing, and rollout. This process took more than a year and was put into production on November 4, 2002. This produced a major change of environment and took considerable effort to rollout. Due to limited resources, the training efforts fell on team members who also had to their daily workload to deal with. Programming efforts continue on changes and enhancements.

The analysis phase of the Claims Unit began in the summer of 2003 and is almost completed. Programming will begin once the Board's business application is moved to a new DOL enterprise server scheduled in '07. There will be significant modifications to the current process. One major improvement already identified is the automated tracking and request for missing information. This will provide the Monitoring Unit with a more accurate measure of a carrier's performance.

The Board continues to work closely with the Bureau of Labor Standards, Unemployment Tax, Child Enforcement, Medical Services, and Social Security to provide data instrumental to their daily operations. We are also automating a number of functional areas which should reduce some of the personnel requirements of the agencies.

Other work includes enhanced system capabilities for data distribution to supervisors, managers, and other entities requesting WCB data as well as expansion of the current electronic data submission process. The '04 Legislative session passed a bill to mandate electronic filing of Board forms. Rules were promulgated to assure compliance in this area. The Board has implemented the first two phases of the EDI mandate, First Report of Injury (FROI), and Denials (Notice of Controversy). The third and remaining phase will focus on payment information and is slated for completion in the fall of 2007.

At this point the Board has implemented the electronic filing of the First Report of Injury. The first phrase of EDI mandates requires electronic submissions of First Reports of Injury as of July 1, 2005. The Board is currently receiving about 95% of First Reports electronically. The second phase mandates the submission of denials by July 1, 2006. One hundred percent of all Denials are currently being submitted by EDI. The third phase which will focus on payment data is currently being reviewed by internal staff. We are anticipating testing and production to occur during Fall 2007.

## **8. BUDGET AND ASSESSMENT**

The Board is funded pursuant to a statutory assessment paid by Maine's employers, both self-insured and insureds. The Legislature in creating this funding mechanism in 1992 intended the users of the workers' compensation system to pay for it. The agency had previously been funded from General Fund appropriations.

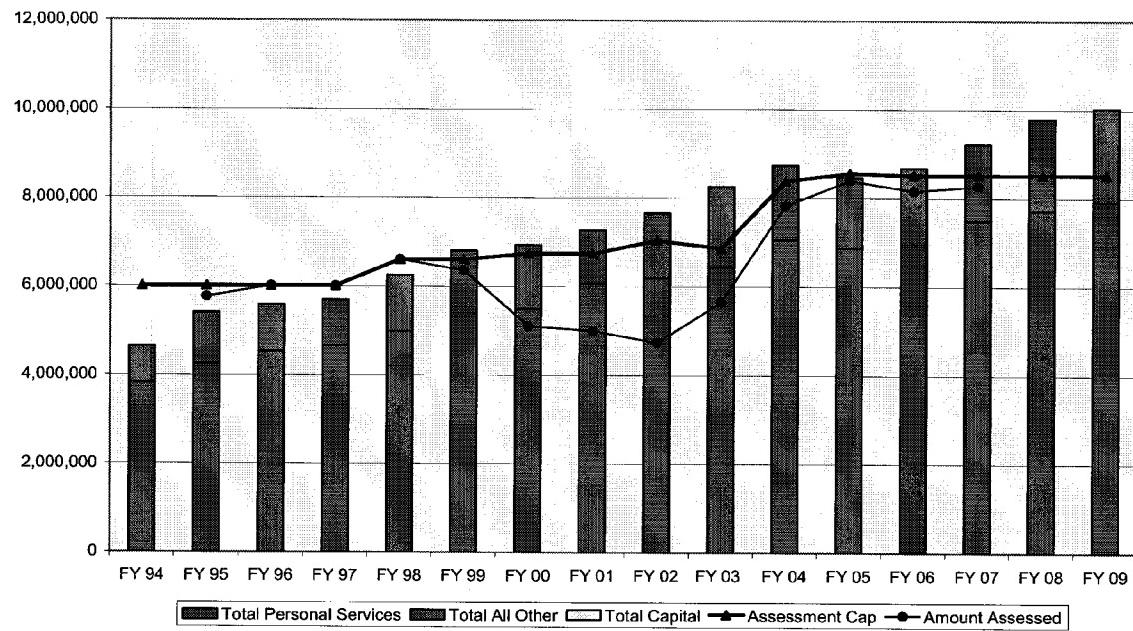
The Legislature established the assessment as a revenue source to fund the Board, but capped the assessment limiting the amount of revenue which can be assessed. A long term solution to this problem is being considered through legislation proposed by the Board in order to deal with costs, beyond the Board's control, associated with contract increases, health insurance, retirement, postage, and lease costs.

The result of this assessment cap has been an inability to submit a balanced budget for the last five fiscal years. The Board cannot budget more than it can raise for revenue from the annual assessment and other minor revenues collected from the sale of copies of documents, fines and penalties. A majority of the fines and penalties received are deposited in the General Fund which contributes no support to the Board. The Legislature voted to raise the assessment cap beginning in FY04. This legislation increased the maximum assessment to \$8,390,000 in fiscal year 2004 and to \$8,565,000 in fiscal year 2005. The total Board-approved budget for the next biennium totaled \$9,684,780 in FY08 and \$9,954,434 in FY09.

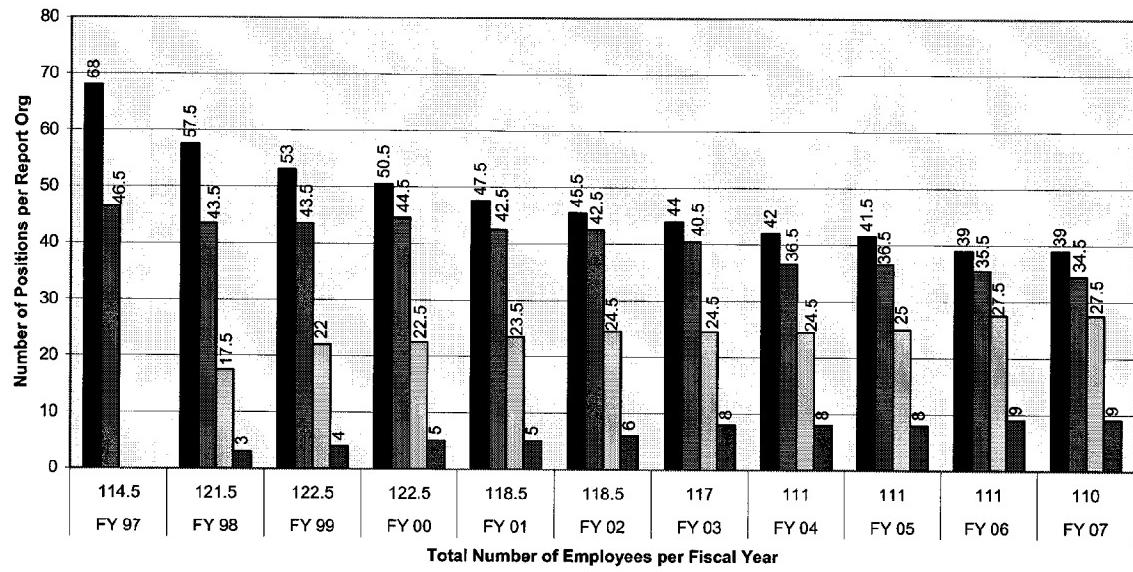
P.L. 2003, C. 93 provides that the Board, by a majority vote of its membership, may use its reserve to assist in funding its Personal Services and All Other expenditures, along with other reasonable costs incurred to administer the Workers' Compensation Act. The Bureau of the Budget and Governor approve the request via the financial order process. This provides greater discretion to the Board in the use of its reserve account.

The projected shortfalls, notwithstanding the higher assessment cap, amount to \$884,780 for FY08 and \$1,154,434 for FY09. The bar chart entitled "WCB – 14 Year Schedule of Actual and Projected Expenditures" shows actual expenditures through FY06 and projected expenditures for FY07. It also shows the assessment cap and the amounts actually assessed through FY06. The bar chart entitled "WCB – Personnel Changes Since FY97" demonstrates the Board's efficient use of personnel since 1997.

**WCB - 16 Year Schedule of Actual and Projected Expenditures**  
**Workers' Compensation Administrative Fund - 0183**  
**September 2007**



**WCB - Personnel Changes Since FY 97**  
**July 2006**



The MAE and Worker Advocate programs represent 33% of the agency's total number of employees.

[■Dispute Resolution ■Central Services ■Advocate Program ■MAE Program]

The Board plans to fund the anticipated shortfall for FY08 through the use of funds from the reserve account. As a solution to the agency's long-term funding issue and to raise the revenue necessary to fund the shortfall for fiscal year 09, the Board has presented the Unified Current Services Budget Submission to the 123<sup>rd</sup> Legislature. This proposal amends Section 1, 39-A M.R.S.A. §154(6) by eliminating the assessment cap beginning in fiscal year 09.

## **9. CLAIMS MANAGEMENT UNIT**

The Claims Management Unit operates under a "case management" system. Individual claims managers process the file from start to finish. The insurance carriers, claims administrators and self-insured employers benefit from having a single contact in the Claims Management Unit.

The Unit coordinates with the Monitoring Unit of the MAE Program to identify carriers that frequently file late forms or who may be consistently late in making required payments to injured workers. Case managers of the Claims Management Unit review the paperwork filed by carriers to ensure that payments to injured workers are accurate and that the proper forms are completed and filed with the Workers' Compensation Board. The Unit conducts training workshops regarding compliance and payments to injured workers upon request.

Greater implementation of Electronic Data Interchange (EDI) has created efficiencies in claims management, allowing managers to increase their claim management efforts, through the electronic filing of the First Report of Injury.

In addition to EDI creating data entry efficiencies, the Unit is also undergoing full business analysis of its overall daily functions. The purpose is to upgrade computer programs and screens in order to streamline the workload, thereby making the daily performance of work more efficient; automate functions that can be done by the computer; and, reduce the time it takes to process claims and associated paperwork. All of these changes will provide the claims managers more time to address higher level and more serious problems and should benefit the entire workers' compensation community. It will also identify, through the computer, filing requirements and deadlines for carriers while notifying them automatically of problems or errors in this regard.

Claims staff search the database for a claim that matches the information on each form that is received, checking by Social Security Number, employee name and date of injury. This is information that is entered into the database after the Employer's First Report of Occupational Injury or Disease is filed with the Board. Claims Management Unit staff verify accuracy of payment information on each claim that is filed with the Workers' Compensation Board for claims that have been open since 1966. Cost of Living Adjustments (COLA) are done on claims beginning with dates of injury on January 1, 1972 through December 31, 1992. Claims staff checks to see that the COLA's are calculated correctly. The filing of forms with incorrect information causes Claims staff to spend considerable time researching files and doing mathematical calculations, which is necessary to ensure that correct payments are made to injured workers.

This Unit is responsible for producing the annual "State Average Weekly Notice" which contains the information necessary to make COLA's on claims, calculate permanent impairment payments, and determine whether fringe benefits should be included in calculating compensation

rates. The Claims staff utilize this information to do mathematical calculations in determining the COLA multiplier and maximum benefit in effect for the following year.

Claims staff produces a Weekly Benefit Table annually. The Weekly Benefit Table is used by all members of the Workers' Compensation community to determine a compensation rate for an employee.

Forms are processed by the Claims staff in the following manner:

**Petitions** – A file for the claim is located or created, the form is entered in the database, and the file is sent to the appropriate Claims Resolution Specialist in a regional office. A telephone call or e-mail message is directed to the person who filed the form if a claim cannot be found in the database. They are asked to provide an Employer's First Report of Occupational Injury or Disease so that a claim can be started.

**Answers to Petitions** - The file for the claim is located, the Answer is entered into the database, and the Answer is forwarded to the file.

**Notices of Controversy** – The initial form is filed electronically. Corrections to the form are submitted to the Board on paper forms and the changes are entered manually by Claims staff.

**Wage Statements** - The average weekly wage is calculated by Claims staff pursuant to Statute, Board Rules, and Law Court decisions. The average weekly wage is entered into the database and the form is forwarded to the file room.

**Schedule of Dependent(s) and Filing Status Statements** - The information on this form is entered into the database and the form is forwarded to the file room.

**Memorandum of Payment; Discontinuance or Modification of Compensation; Consent between Employer and Employee** - The form is checked for accuracy by comparing dates, the rate and the wage to information previously filed. The form is entered into the database and then sent to the file room. If there is a problem, a telephone call or e-mail message is directed to the person who filed the form for an explanation or revision. Explanations or amended forms are requested.

**21-Day Certificate or Reduction of Compensation** - The form is checked for accuracy comparing dates, the rate and the wage. The form is entered into the database once completed. In cases of an illegal suspension or reduction, the file is forwarded to a Claims Resolution Specialist in a regional office.

**Lump Sum Settlement** – The information on this form is entered into the database and the form is sent to the file room.

**Statement of Compensation Paid** – The information on this form is compared to information previously reported, the form is entered into the database and the form is sent to the file room. A

large number of these forms are found to have errors which results in staff having to research the file and contact the person who filed the form, requesting corrected or missing forms.

The Claims Management Unit processes the following forms: Filed as of Oct. 31, 2006

Employer's First Report of Occupational Injury or Disease	24,832 electronic filing 1,253 paper filing
Notice of Controversy	3,163 electronic filing 6,242 paper filing
Petitions	4,054
Answers to Petitions	1,623
Wage Statement	7,966
Schedule of Dependent(s) and Filing Status Statement	8,032
All Payment Forms, including:	
Memorandum of Payment;	
Discontinuance or Modification of Compensation;	
Consent Between Employer and Employee;	
21-Day Certificate of Discontinuance or Reduction of Comp;	
Lump Sum Settlement	17,354
Statement of Compensation Paid	13,565

Currently, the only forms that can be filed electronically are the Employer's First Report of Occupational Injury or Disease and the Notice of Controversy. All other forms are filed on paper and entered manually. Most payment forms will change to electronic filing in 2007.

## **10. INSURANCE COVERAGE UNIT**

The Insurance Coverage Unit has new computer screens resulting from recent program upgrades. The new screens help to streamline data entry and enhance the ability to identify trends and problems with carriers. The program can link coverage and do employer updates more easily than in the past. As a result, the number of claims without coverage has been reduced from approximately 100,000 to fewer than 10,000. As a direct result of the computer upgrade and streamlining the workload, the Coverage Unit staff was reduced by three employees.

The Board's database was merged with the Department of Labor's roughly five years ago, resulting in greater collaboration with the Department of Labor and the Bureau of Insurance. The Unit processes proof of workers' compensation insurance coverage both manually and electronically. A staff member is assigned for processing applications for waivers to the Workers' Compensation Act.

The Unit supervisor is responsible for a multitude of duties including the approval of applications for predetermination of independent contractor status. The functions of the Unit consist of proof of coverage, waivers, and predeterminations. The goal of staff is to process 80% of the proof of coverage filings within 24 hours of receipt (the Board received and processed 38,595 proof of coverage filings between January and October 2006); 90% of waiver applications within 48 hours of receipt (the Board received and processed 2,437 waiver applications between January and October 2006); and 100% of predetermination applications within 14 days (the Board received 2,015 applications between January and October 2006). ALL GOALS WERE MET IN 2006.

The Unit assists with problem claims including the identification of insurance coverage, the identification of employers, and identifying address changes for employers. This is done to properly process and assign claim files to the appropriate regional offices. The Coverage staff works closely with the Abuse Investigation Unit regarding problems associated with coverage enforcement. The Unit cooperates with the MAE program to identify carriers and self-insureds who consistently fail to file required information in a timely manner. And, it assists the Bureau of Labor Standards to maintain an accurate and up-to-date employer database, utilized by both departments.

The Unit researches the history of employer insurance coverage in order to certify the accuracy of these records. This is particularly important for many of the claims at formal hearing, especially where there is a controversy as to the liability for the payment of the claim. Since workers' compensation coverage in Maine is mandatory, the Unit routinely provides assistance to the public regarding insurance coverage requirements.

## **11-A. COORDINATION WITH OTHER AGENCIES**

The Board has been successful in its effort to coordinate its work with other state and federal agencies.

An example of this success is the Board's migration of its employer database to the Department of Labor's (DOL) database. For years, in its effort to identify employers that were operating without required workers' compensation coverage, the Board compared its coverage information to DOL's unemployment database. A great deal of unnecessary paperwork for the Board and for Maine's employers was generated due to the inconsistencies between the two databases. Information that was updated on one system, for example, would not always be updated on the other system. Now, with the two databases combined, the Board can more accurately identify employers without coverage. Efforts are currently underway to coordinate other DOL employer databases into one.

The Board also collects a significant amount of data on its forms to assist the Bureau of Labor Standards (BLS) in its task of producing statistical reports. An example of the Board's responsiveness in this area involves a form titled "Statement of Compensation Paid." At the request of BLS, which wanted more detailed information, the Board acted to incorporate the requested changes.

The same holds true for the Occupational Safety and Health Administration (OSHA). Maine is currently one of the few states in the nation that captures OSHA required data on its First Report of Injury form. This means that Maine's employers, in the event of an accident in the workplace, only have to fill out one form to meet both state and federal requirements. This has substantially reduced the paperwork burden on Maine's employers.

The Board also works with the Bureau of Insurance (BOI) with respect to its annual assessment. BOI provides information on premiums written, predictions on market trends, and paid losses information for self-insured employers. The Board uses this information when it calculates the annual assessment. The Monitoring, Auditing, and Enforcement (MAE) Unit works directly with BOI on compliance and enforcement cases pursuant to 39-A M.R.S.A. § 359(2). The WCB certifies and forwards to BOI cases which involve questionable claims handling techniques or repeated unreasonable contested claims for appropriate sanctions by BOI.

There are also increasing requests from the Bureau of Labor Standards for data and additional elements. Some fundamental changes were made in the area of data responsibility. Basically, programming changes will be made to give BLS the ability and authority to modify specific information with regard to the physical location of the employer where an injury has occurred. the Occupational Safety and Health Data Collection and Injury Prevention Group was formed in response to P.L. 2003 Ch. 471 to review various data collection and injury prevent efforts and to make recommendations to the Labor Committee. The Bureau of Labor Standards has coordinated this effort with assistance from the Workers' Compensation Board.

A coordinated effort is underway with Bureau of Information Services to upgrade the WCB's computer hardware and software. Upgrades include desktops, network servers, database server, network hubs, and a routed network. Major programming changes have been underway for the past two years and will continue into the foreseeable future.

The Board has also worked with the Department of Health and Human Services (DHHS) to assist DHHS with recovering past due child support payments and to ensure that MaineCare is not paying for medical services that should be covered by workers' compensation insurance.

## **11-B. ALTERNATIVE DELIVERY SYSTEMS INCLUDING PRIVATIZATION**

The 121st Maine Legislature enacted legislation that required the Workers Compensation Board (WCB) to adopt rules mandating electronic filing. The legislation directed the Board to proceed by the consensus based rulemaking process, so a committee was formed consisting of representatives from the insurance community, self insures, WCB of Directors and WCB staff. Recommendations were forwarded and unanimously approved by the Board of Directors.

The WCB will offer two options with regard the to electronic filing format for the First Report of Injury; a proprietary format that has been in use over the past 7 years and the International Association of Industrial Accident Boards and Commissions (IAIABC) Claims Release 3. At this point the Board has implemented the electronic filing of the First Report of Injury. The first phrase of EDI mandates requires electronic submissions of First Reports of Injury as of July 1, 2005. The Board is currently receiving about 95% of First Reports electronically. The second phase mandates the submission of denials by July 1, 2006. One hundred percent of all Denials are currently being submitted by EDI. The third phase which will focus on payment data is currently being reviewed by internal staff. We are anticipating testing and production to occur during Fall 2007.

## 12. ABUSE INVESTIGATION UNIT

The Abuse Investigation Unit (AIU) is authorized to "investigate all complaints of fraud, illegal or improper conduct or violation of the Act or rules of the board relating to workers' compensation insurance, benefits or programs, including ... acts by employers, employees or insurers" as directed by the board. 39-A M.R.S.A. §153 (5). The board has charged AIU to investigate and assess penalties under the following provisions of the Act.

- **Section 205 (3)** requires payment of weekly compensation benefits within 30 days of becoming due when there is no ongoing dispute. Penalties of \$50 per day to a maximum of \$1,500 are payable to the injured employee;
- **Section 205(4)** requires payment of medical bills within 30 days of becoming due when there is no ongoing dispute. Penalties of \$50 per day penalty up to a maximum of \$1,500 are payable to the Board's Administrative Fund.
- **Section 324(2)** mandates payments pursuant to any board order or approved agreement be made within 10 days. Violations of this section may be penalized up to \$200 per day with the first \$50 per day payable to the employee and any additional fine payable to the Board's Administrative Fund.
- **Section 360(1)** provides for penalties when a mandatory form is not filed or not filed within time frames set by rule or statute. Violations of this section carry a maximum penalty of \$100, payable to the General Fund.

AIU also has limited responsibilities to investigate complaints and recommend penalties under sections 324(3), 359(2) and 360(2). Complaints brought pursuant to these provisions are referred to an administrative law judge (an official or hearing officer of the board) who holds a hearing, takes evidence, and assesses any penalties &/or fines.

- **Section 324(3)** provides penalties for failure to secure required workers' compensation insurance. Fines may be levied up to \$10,000.00 or an amount equal to 108% of the unpaid premiums, whichever is greater. Violators may also be subject to loss of corporate status, suspension of a state-issued license, and/or referral to the Attorney General for criminal prosecution. Penalties under this section are paid to the Board's Employment Rehabilitation Fund.
- **Section 359(2)** provides a penalty of up to \$10,000 for any employer, insurer or third-party administrator who engages in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. Penalties under this section are payable to the Board's Administrative Fund. Any violations are certified to the Superintendent of Insurance, for further action.
- **Section 360(2)** requires penalties for willful violation, intentional misrepresentation and/or fraud under the Act. Individuals may be fined up to \$1,000 and corporations, partnership or other legal entities up to \$10,000 for violations. Repayment of compensation received, or of

compensation wrongfully withheld, may also be ordered. Penalties are payable to the General Fund.

In 2006, AIU carried an open caseload of 4806 claims, including 2894 new filings during the calendar year. See Table 1. The number of new cases filed in 2006 represents an 11.9% increase over 2005. The majority of claims continue to fall into two sections: § 360(1) for late filings and § 324(3) for failure to carry workers' compensation insurance. In 2006 1475 cases were filed pursuant to Section 324(3) representing a modest 7 % increase over 2005, while 1363 new claims were filed under Section 360(1) accounting for a more substantial 19% increase over the prior year.

**Table 1: Filings by Statutory Provision - 2006**

Statute Section	Open 1/1/2006	Filed	Closed	Open 1/1/2007*
205(3)	37	8	0	45
205(4)	21	1	0	22
324(2)	152	30	23	159
324(3)	693	1475	1291	877
356(2) <sup>†</sup>	9	1	1	9
360(1)	952	1363	1126	1189
360(2)	48	16	30	34
<b>TOTALS</b>	<b>1912</b>	<b>2894</b>	<b>2471</b>	<b>2335</b>

\* based on projections of cases filed & closed for December 2006

<sup>†</sup> starting balance reported as zero (0) in the prior report.

The number of complaints brought annually under section 360(2) has remained relatively low compared to other provisions of the Act; claims average approximately 15 - 20 per year. Nonetheless, instances of intentional misrepresentations, willful violations &/or fraud hold a special status for the workers' compensation system. Violations of these provisions can undermine fair and accurate determinations, and employees who defraud the system increase costs by obtaining benefits to which they were not entitled while employers or insurers who commit fraud place themselves in an unfair competitive position to those employers and insurers complying with Maine law. Recognizing the small but important role that section 360(2) cases hold, AIU continues to fast-track these claims. In 2006, 16 complaints were filed and all were either resolved or referred to formal hearing during the calendar year. During 2006 AIU also established a working arrangement with Attorney General's office of Financial Crimes to refer cases for criminal prosecution when warranted. In 2006, the Unit referred four cases to the Attorney General all of which resulted in criminal convictions.

In 2006 the dollar amount of fines assessed annually continued to track the distribution of cases by statutory provision; the majority of penalties expressed in dollars are assessed for cases under section 324(3) and 360(1). In 2006 \$54,871 in penalties were assessed for late-filings pursuant to § 360(1), and \$774,580 in penalties were levied for lack of insurance coverage in accordance with § 324(3).

## **13. GENERAL COUNSEL REPORT**

### **A. Rules.**

Pending before the Board for final adoption are rules requiring the electronic filing of First Reports of Injury and Notices of Controversy. These rules were developed using the consensus-based rule-making process.

The Board adopted amendments to W.C.B. Rule Ch. 5, the medical fee schedule. These amendments incorporated the 2005 Physician's Current Procedural Terminology ("CPT codes") and the 2005 Medicare RBRVS. These amendments also address the mileage and reimbursement rates for travel to and from medical appointments.

The Board is currently in the process of reconvening a consensus based rulemaking group to look at hospital inpatient and ambulatory surgical care centers.

### **B. Legislative Activity.**

The Board has submitted four bills for consideration during the First Regular Session of the 123<sup>rd</sup> Legislature.

The first bill adds registered domestic partners, as defined in Title 22, Section 2710, to the list of individuals who can waive coverage in certain circumstances.

The second bill provides that penalties for non-payment of bills for medical or health care services are payable to the providers of the medical or health care service or the employee who paid for the medical or health care service instead of to the Board's Administrative Fund.

The third bill clarifies that decisions issued by the Board pursuant to Section 360 are final agency action subject to appeal to the Superior Court whether or not a penalty is imposed.

And the fourth bill authorizes the Board to have the Attorney General or private counsel to prosecute any action necessary to enforce penalties payable to the Administrative Fund, Employment Rehabilitation Fund, or the General Fund.

### **C. Extreme Financial Hardship Cases.**

Pursuant to 39-A M.R.S.A. § 213(1) the Board "may in the exercise of its discretion extend the duration of benefit entitlement ... in cases involving extreme financial hardship due to inability to return to gainful employment."

The Board has one hardship case scheduled for December 2006.

During 2003, in *Richards v. Sappi/S.D. Warren Co.*, the Board found extreme financial hardship due to inability to return to gainful employment. This decision was upheld by the Law Court in a Memorandum of Decision.

**D. Board Review Pursuant to 39-A M.R.S.A. § 320.**

The Board reviewed two cases pursuant to Section 320 in 2006.

In *Shaver v. Poland Spring Bottling Corp.*, an employee was terminated pursuant to a company policy for failing to immediately report an injury. The Board held that was illegal discrimination because "[t]he employer's policy forced the employee to choose between reporting an injury or losing his job ... the only way for the employee to have avoided being fired would have been to not file a claim, an alternative clearly at odds with the beneficent purpose of the Act." The Law court rejected the appeal and, in effect, upheld the Board's decision.

The Board also agreed to consider two consolidated cases, *Fernald v. Shaw's Supermarkets* and *Babine v. Bath Iron Works*. The decisions being reviewed held that an ambulatory surgical care center was entitled to its usual and customary charge. The Board, after deliberations, deadlocked 3-3, so the decisions of the hearing officer stand.

## **14. 39-A M.R.S.A. § 213 THRESHOLD ADJUSTMENT AND EXTENSION OF 260-WEEK LIMITATION**

The Workers' Compensation Act provides for a biennial permanent impairment threshold adjustment and a study of whether an extension of weekly benefits is warranted. Section 213(2) provides, in part, that the Board, based on an actuarial review, adjust the permanent impairment threshold so that 25% of all cases with permanent impairment will be expected to exceed the threshold and 75% of all cases with permanent impairment will be expected to be less than the threshold. In 1998, the Board reduced the threshold from 15% to 11.8% based on an actuarial report compiled by Advanced Risk Management Techniques, Inc.

Pursuant to 39-A M.R.S.A. § 213(4), the 260-week limitation contained in Section 213(1) must be extended 52 weeks for every year the Board finds the frequency of cases involving the payment of benefits under Sections 212 and 213 is no greater than the national average. Based on a report provided by Advanced Risk Management Techniques, Inc., the limitation referenced in Section 213(4) was extended for 52 weeks on January 1, 1999.

The Workers' Compensation Board hired the actuarial firm of Deloitte & Touche to conduct the independent actuarial review for the 39-A M.R.S.A. §§ 213(2) and (4) adjustment and extension for 2000 and 2001. Based on the 2000 Deloitte & Touche actuarial report, the Board retained the 11.8% threshold and extended the limitation referenced in Section 213(4) by 52 weeks on January 1, 2000.

The Board did not extend the limitation referenced in Section 213(4) in 2001, 2002 or 2003. Based on a report provided by Practical Actuarial Solutions, Inc., the Board adopted a rule establishing that the benefit limitation was not extended on January 1, 2004 or January 1, 2005.

Pursuant to P.L. 2001, Ch. 712, the Board referred the threshold adjustment for January 1, 2002 to an arbitrator appointed by the American Arbitration Association. The arbitrator determined that the permanent impairment threshold for January 1, 2002 is 13.2%.

Based on a report from Practical Actuarial Solutions, Inc., the permanent impairment threshold was adjusted, effective January 1, 2004, to 13.4% from 13.2%.

The Board is currently considering whether or not the benefit limitation should be extended for 52 weeks as of January 1, 2006 and whether the permanent impairment threshold should be adjusted as of January 1, 2006.

## **15. SUMMARY**

The Workers' Compensation Board has experienced significant changes during the last two years. The Governor worked diligently with both Labor and Management to ensure the passage of P.L. 2004, Ch. 608 which went into effect on April 8, 2004. The intent of the legislation was to break the Board's gridlock on key issues and to return a sense of normalcy to the operations of the agency. Since the inception of the legislation, the Board has resolved all of the gridlock issues and has a renewed sense of responsibility in setting policy for Board business. Some of the difficult issues the Board has acted on include: hearing officer appointments; hearing officer terms; budgetary and assessment matters; Section 213 actuarial studies; electronic filing mandates; safety issues; by-law revisions; legislation; compliance matters; Section 312 independent medical examiners; worker advocate issues; and dispute resolution matters. Some of the other issues that the Board will face during 2007 include the independent medical examiner program, the hospital fee schedule, and Section 213 issues (extension of benefits and permanent impairment thresholds). For 2006 and 2007 Labor and Management must also develop a better working relationship for reaching consensus on these challenging issues.

The importance of the Governor's legislation (Chapter 608) cannot be overly emphasized. The State of Maine has gradually improved its national ranking regarding the costs of workers' compensation and an effective and efficient Board will help to perpetuate this positive trend. It was not too long ago that Maine was one of the costliest states in the nation in regard to workers' compensation costs. A recent article in the *Workers' Compensation Policy Review* highlighted Maine's achievements during the past few years: "The experience in Maine...clearly demonstrates that significant reduction in cash, medical and total benefits are possible."

Maine has gone from one of the costliest states in the nation to one that is reaching the level of average costs for both premiums and benefits and has positioned itself to continue this trend. Maine appears to have struck a balance between reasonable costs and reasonable benefits, all within the Governor's policy of making Maine even-handed and competitive.

Other matters of immediate concern to the Board include: resolution of the Independent Medical Examiners (IMEs) problem; completion of Section 213 Actuarial Study for 2006; implementation of Electronic Data Interchange (EDI) mandates; implementation of a hospital fee schedule; increasing resources for the Worker Advocate Program; and a return of the formal hearing timelines to 2002 levels.

In 2003 the Legislature enacted Chapter 425, which increased the maximum assessment to \$8,390,000 in fiscal year 2004 and to \$8,565,000 in fiscal year 2005. The Board budgeted \$9,066,709 and \$9,376,559 for fiscal years 2006 and 2007 and funded the shortfall from the reserve account. The Board approved a biennial budget for FY 08 of \$9,810,160 and \$10,052,372 for FY 09, which represents a 2.6% increase for FY 08 and a 2.5% increase for FY 09. The budget proposes no increase in the Board's staffing levels. Personnel cost increases are attributable to fixed personnel costs such as insurance and retirement. The Board will use funds

from the Reserve Account to fund the shortfall in FY 08 and has submitted legislation that ties the FY 09 budget to the allocation approved by the Legislature.

The Board is performing efficiently in other major areas of responsibility: MAE Program; Worker Advocate Program; Claims and Coverage, Electronic Data Interchange (EDI), and Dispute Resolution. The MAE Program continues to impact positively on the compliance and performance of insurers, self-insureds, and third party administrators. The Worker Advocate Program provides representation of 50% of injured employees at the mediation level and 30% of injured employees at formal hearing level. The major programming changes in Claims and Coverage are bringing about significant improvements in the operations of those departments; and the implementation of EDI mandates has led to the electronic filing of First Reports (July 1, 2005), the filing of Denials by April-June 2006, and mandated the filing of Payments by April-June 2007. Dispute Resolution continues to perform efficiently at the troubleshooting and mediation levels, resolving 75% of all cases within 90 days. Upon resolving the Independent Medical Examiners problem, formal hearings should return to 2002 levels.



**SECTION B**  
**BUREAU OF INSURANCE**



## **SECTION B. BUREAU OF INSURANCE**

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## **1. INTRODUCTION AND BACKGROUND**

### **Introduction**

This report looks at competition in the Maine workers' compensation insurance market by examining different measures of market competition. Among the measures are: 1) the number of insurers providing coverage; 2) insurer market share; 3) changes in market share; 4) ease of entry into and exit out of the insurance market by workers' compensation insurers; and 5) comparing variations in rates.

The tables in this report that show accident year and calendar year loss ratios contain five years of information. Loss ratios are updated each year to account for how costs have developed for open claims, claims closed and any claims reopened during the year. Other tables and graphs contain up to ten years of information.

The last three loss cost filings have resulted in two small increases followed by no change. This is a positive trend and shows some stabilization in the market. Some insurers have filed to increase their loss cost multipliers though. In November, 2004 Maine Employer's Mutual Insurance Company (MEMIC) raised the multiplier for their standard tier to 1.45. This may not be increased again without review and approval by the Superintendent pursuant to Title 24-A, Section 3714. The frequency of injuries in Maine continues to decline, but indemnity and medical severity are increasing. Forty eight percent of workers' compensation costs in Maine are for indemnity benefits and 52% are for medical benefits. The countrywide average for indemnity is 42%. Indemnity severity tends to increase with age. According to NCCI, the share of Maine's population aged 45-64 is expected to increase through 2010. The aging of Maine's population suggests some upward pressure in indemnity costs going forward.

The Terrorism Risk Insurance Act (TRIA), signed into law in 2002, established a temporary Federal program under which the federal government shares in the cost of terrorist attacks with the insurance industry. Its intent is to protect consumers and insurers by addressing market disruptions and ensuring the continued availability and affordability of insurance for terrorism risk. It also allowed for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses. In workers' compensation, losses may not be excluded from coverage due to terrorism. In late 2005, Congress voted to extend TRIA until December 31, 2007. Since September 2001 reinsurance contracts have excluded coverage for terrorist acts, though primary insurers are still liable for that exposure. This could further disrupt the market since many insurers may decide against writing accounts where there are high concentrations of employees at a single location.

Different criteria may be used to determine if the insurance industry is competitive. Although Maine's market has become quite concentrated and MEMIC writes a large volume of business, there are still many insurers writing some workers' compensation coverage in Maine and self-insurance remains a viable alternative for other Maine employers. Insurers, however, are being conservative in the selection of business that they choose to provide coverage for or to renew. An insurer can decide to non-renew business for any reason as long as it provides the policyholder with the statutorily required advance written notice. Furthermore, insurers are less willing to offer underwriting discounts to some employers and some have been moved to higher rating tiers.

## **Accident Year, Calendar Year and Policy Year Reporting**

Workers' compensation is a long-tail line of insurance, meaning payments for claims can be made over a long period of time. For some claims, wage loss and medical services payments may occur over many years; thus, figures for amounts actually paid out on claims are incomplete and future amounts to be paid on open claims must be estimated. Insurance companies report information used to calculate financial ratios. This information is presented on an accident year, calendar year, or a policy year basis. Ratios may vary greatly, depending on the reporting basis utilized.

In this publication, most information is reported on an accident year basis. However, to better understand each basis of reporting information, a description of each method and its use follows.

- Accident year experience matches all losses for injuries occurring during a given 12-month period of time (regardless of when the losses are reported) with all premiums earned during the same period of time (regardless of when the premium was written). The accident year loss ratio shows the percentage of premium earned that is being paid out or expected to be paid out on claims. It enables the establishment of a basic premium reflecting the pure cost of protection. Accident year losses or loss ratios are used to evaluate experience under various laws because claims are tracked by year and can be associated with the law in effect at the time of the injury. This information is projected because claim costs change over time as claims further develop, with the ultimate result determined only after all losses are settled. Therefore, the ratios for each year are updated on an annual basis.
- Calendar year loss ratios match all losses incurred within a given 12-month period (though not necessarily for injuries occurring during that 12-month period) with all premiums earned within the same period of time. Because workers' compensation claims are often paid out over a long period of time, only a small portion of calendar year losses are attributable to premiums earned that year. Many of the losses paid during the current calendar year are for claims occurring in past calendar years. Calendar year loss ratios also reflect reserve adjustments for past years. If claims are expected to cost more, reserves are adjusted upward; if they are expected to cost less, reserves are adjusted downward. Calendar year incurred losses are used primarily for financial reporting. Once calculated for a given period, calendar year experience never changes.
- Policy year experience segregates all premiums and losses attributed to policies having an inception or a renewal date within a given 12-month period. The total value of all losses for injuries occurring during the policy year (losses paid plus loss reserves) are assigned to the period regardless of when they are actually reported. They are matched to the fully developed earned premium for those same policies. The written premium will develop into earned premium for those policies. The ultimate incurred loss result cannot be finalized until all losses are settled. It takes time for the losses to develop, so it takes about two years before the information is useful. This data is used to determine advisory loss costs.

## **The Underwriting Cycle**

Insurance tends to go through underwriting cycles--successive periods of increasing or diminishing competition and increasing or decreasing premiums. These cycles are important factors in the short-term performance of the insurance industry. Hard markets are periods in which there is less capacity and competition and fewer insurers willing to write business. Soft markets are periods of increased competition--identified by an increased capacity to write business, falling rates, and growing loss ratios, resulting in insurer operating losses. This can eventually force loss ratios to critical levels, causing insurers to raise their rates and reduce their volume of business. Ultimately this restores insurer profitability and surplus. This situation, in time, spurs another round of price-cutting, perpetuating the cycle.

In the late 1980s and early 1990s, Maine's workers' compensation insurance market was hard. From the mid-1990s until about 2000, Maine's market would be considered soft. After 2000 insurance markets became less competitive, and this trend increased following the events of September 11, 2001. Hard markets may also occur when insurers tighten their underwriting standards or reduce their use of premium credits. This describes what has happened in Maine over the last several years. However, there are some indications nationally that the market has begun to soften.

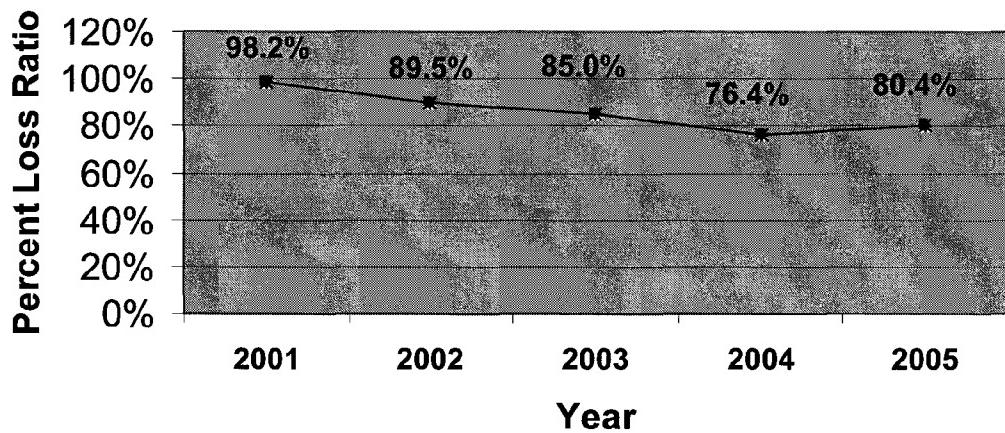
The accident year incurred loss ratio was 80.4% in 2005, 76.4% in 2004 and 85.0% in 2003. Loss ratios that exceed 100% mean that insurers are paying out more in benefits than they collect in premiums. A decrease in these loss ratios over time may reflect increased rates, an improved loss experience or reserve adjustments (i.e., revising the amount of money expected to be paid out on claims). The loss ratio does not take into account underwriting expenses of the insurer--including things like acquisition expenses, general expenses and taxes.

## 2. RECENT EXPERIENCE

### Accident Year Loss and Loss Adjustment Expense Ratios

The accident year loss ratio shows the percent of earned premium used to fund losses and their settlement. Exhibit I shows the accident year loss ratios for the most recent five years available. Loss ratios in this report are based on more mature data and may not match the loss ratios for the same years in prior reports. Claim costs and loss adjustment expenses are further developed, so the loss ratios reflect more recent estimates of what the claims will ultimately cost. The loss ratios do not include general expenses of insurance companies such as overhead, marketing and federal or state taxes, nor do they include investment income. The 2005 loss ratio was 80.4%, indicating that about \$80 is expected to be paid out for losses and loss adjustment expenses for every \$100 earned in premium. The 2004 loss ratio was 76.4%. These ratios are much lower than the 2001 loss ratio of 98.2%. The decreasing loss ratios are primarily a result of increased rates, fewer insureds being placed into lower rating tiers, and a reduction of credits issued by the insurance companies. Increases in insurance company loss cost multipliers and a reduction of credits have, in part, resulted in an increase in earned premium and a reduction in the loss ratios in recent years.

**Exhibit I. Accident Year Loss and Loss Adjustment Expense Ratios**



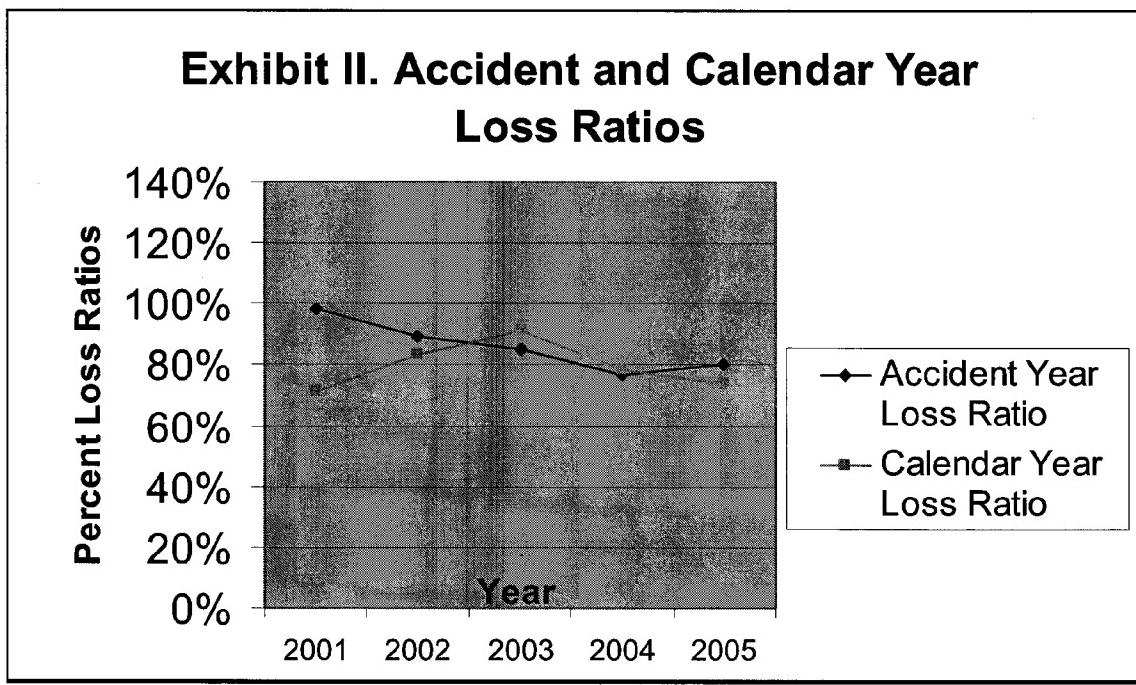
Source: National Council on Compensation Insurance

## **Calendar Year and Accident Year Loss Ratios**

In addition to accident year loss ratios, Exhibit II shows calendar year loss ratios. Calendar year loss ratios compare losses incurred in a year to the premiums earned in that year (although only a small portion of the losses are attributable to premiums earned that year). The calendar year loss ratios reflect payments and reserve adjustments (changes to estimated ultimate cost) on all claims during a specific year, including those adjustments from prior injury years. Over the past six years, the calendar year loss ratio has ranged from the low 70s to the low 90s. In 2005, it was 73.6, its lowest level since 2001.

While calendar year data is relatively easy to compile and is useful in evaluating the financial condition of an insurance company, accident year data is more useful in evaluating the claim experience during a particular period because it better matches premium and loss information. In addition, the accident year experience is not distorted by reserve adjustments on claims that occurred in prior periods, possibly under a different law.

The 2001 accident year loss ratio was over 98%, meaning \$98 was paid or expected to be paid in losses and loss adjustment expenses for every \$100 earned in premium. Since then loss ratios have declined. The accident year loss ratio did increase slightly from 2004 to 2005 though. The workers' compensation market is showing signs of softening. These ratios do not include amounts paid by insurers for sales, general expenses and taxes, nor do they reflect investment income. The movement of the calendar year loss ratios from below to above the accident year loss ratios may reflect increases in reserves on prior accident years.



Source: National Council on Compensation Insurance

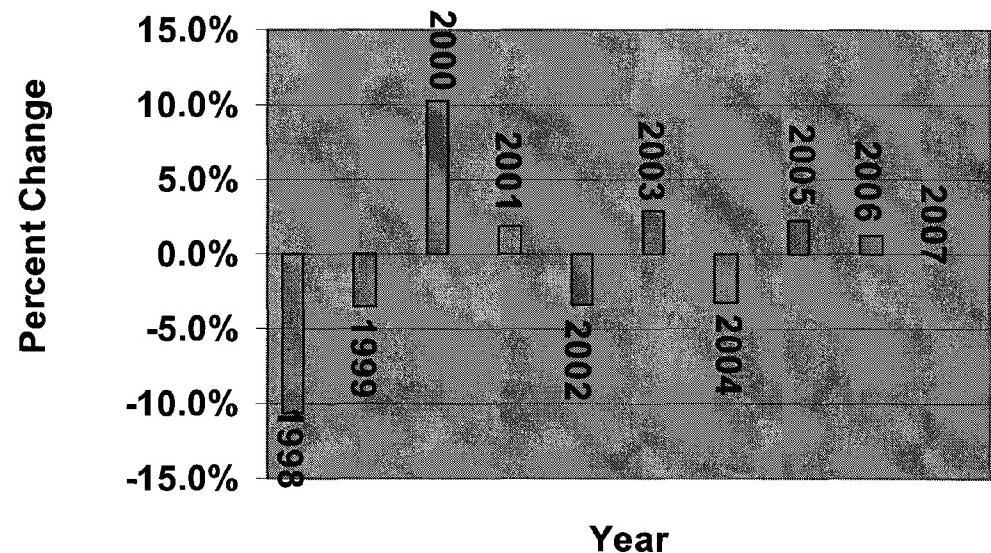
### **3. LOSSES IN WORKERS' COMPENSATION**

#### **Changes in Advisory Loss Costs**

The National Council on Compensation Insurance (NCCI) files advisory loss costs on behalf of workers' compensation carriers. The advisory loss costs reflect the portion of the rate that applies to losses and loss adjustment expenses. Advisory loss costs do not account for what the insurer pays for general expenses, taxes and contingencies, nor do they account for profits and investment income. Under Maine's competitive rating law, each insurance carrier determines what it needs to cover those items.

In 2007, there was no increase in the advisory loss costs. Since 2001, there have been some increases and some decreases, but overall there has been minimal change in the advisory loss costs since 2001. The last large increase in the loss costs was 10.3 percent in 2000. Changes in the advisory loss costs tend to lag behind changes in actual experience and precede changes in rates.

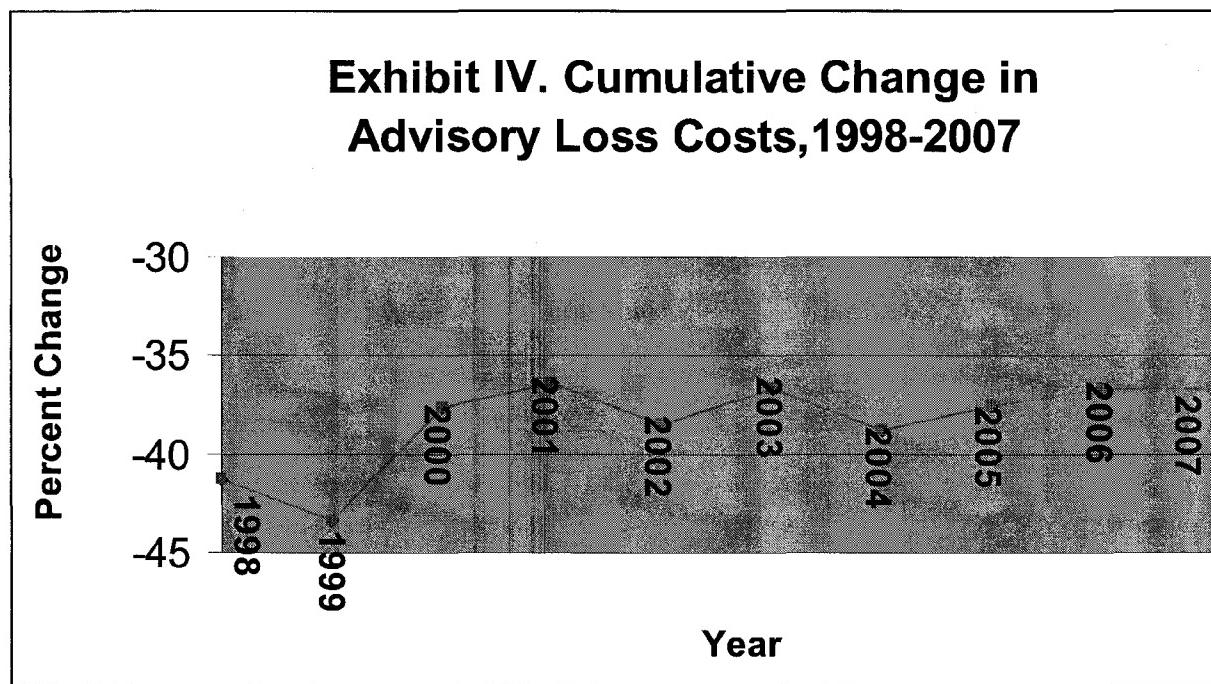
**Exhibit III. Percent Change in  
Advisory Loss Costs, 1997-2006**



Source: National Council on Compensation Insurance

## **Cumulative Changes in Advisory Loss Costs**

Average advisory loss costs have remained steady over the past seven years. In fact, the 2007 average loss costs will be in line with those of 2001.



Source: National Council on Compensation Insurance

## **4. MARKET STRUCTURE AND COMPETITION**

### **Market Concentration**

Market concentration is another measure of competition. Greater concentration means that there are fewer insurers in the market or insurance written is concentrated among fewer insurers and therefore less competition. Conversely, less concentration indicates that there are more insurers in the market and greater competition.

As of October 1, 2006, 267 companies are authorized to write workers' compensation coverage in Maine. However, this number is not the best indicator of market concentration, as some insurers have no written premium. In terms of written premium, the market share for Maine Employers' Mutual Insurance Company (MEMIC) remains at nearly 65% of the insured market. This indicates that other carriers are more selective and less willing to provide coverage for some businesses. The following table shows the number of carriers, by level of written premium, for those carriers writing workers' compensation insurance in 2005. The number of carriers writing over one million dollars in written premium decreased from 28 in 2003 to 21 in 2004. It increased to 23 in 2005. This information is one indicator that the market is more concentrated and somewhat less competitive than it was a couple of years ago.

**Table I: Number of Companies by Level of Written Premium--2005**

Amount of Written Premium	Number of Companies At That Level
>\$10,000	108
>\$100,000	72
>\$1,000,000	23

Source: Annual Statements Filed with the Bureau of Insurance

Looking only at market concentration does not give a complete picture of market competition. A discussion of self-insurance, found in the Alternative Risk Markets section, gives a more balanced perspective.

## **Herfindahl-Hirschman Index**

The Herfindahl-Hirschman Index (HHI) is a method to measure market concentration. The HHI is calculated by summing the squares of the market shares (percentages) of all groups in the market. The National Association of Insurance Commissioners publishes a Commercial Lines Competition Database Report as a reference source of measures to examine the competitiveness of state insurance markets, and the HHI is one of the data elements in the report. In the latest report issued in 2006 based on 2004 information the HHI for the workers' compensation line in Maine was 4,404. This was the highest for all commercial lines in Maine, with medical malpractice next at 4104 and other commercial lines between 211 and 980. Three other states were higher than Maine for workers' compensation insurance. As mentioned in the report, there is no precise point at which the HHI indicates that a market or industry is concentrated highly enough to restrict competition. The U.S. Department of Justice has developed guidelines with regard to corporate mergers and uses 1800 to indicate highly concentrated markets, the range from 1000 to 1800 to indicate moderately concentrated markets and an HHI less than 1000 is considered not concentrated. Application of these guidelines to Maine's workers' compensation market must be done with caution given Maine's unique factors: an employer owned mutual insurer created to replace a highly concentrated residual market where other insurers were reluctant to write actively in this state, and a high percentage of employers self-insured individually or in a group.

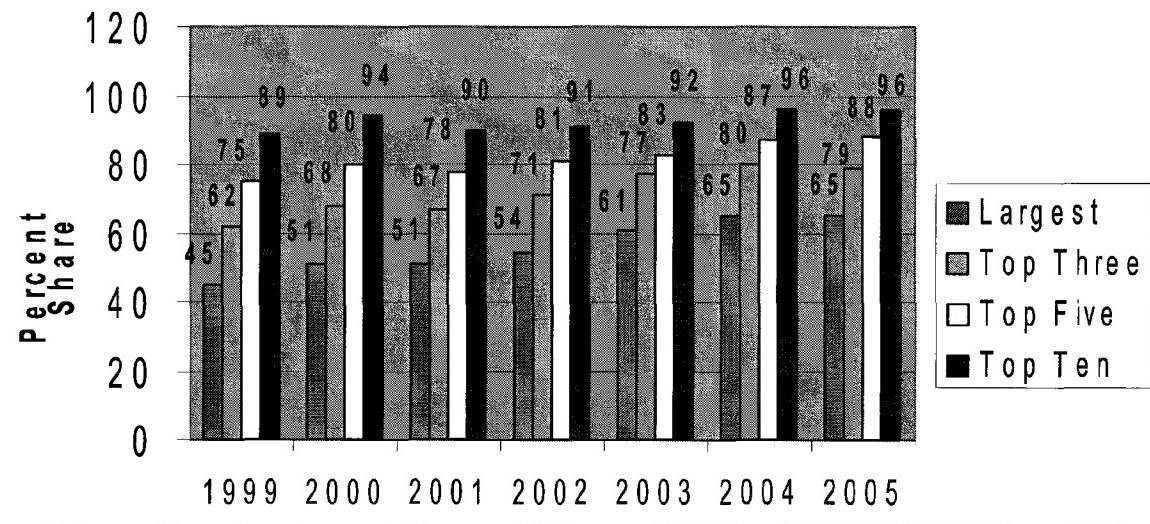
Source: NAIC 2004 Commercial Lines Competition Database Report, page 34.

## Combined Market Share

Exhibit V illustrates the percent market share of the largest commercial insurance group, in terms of written premium, as well as the percent market share for the top three, top five and top 10 insurer groups. Maine Employers' Mutual Insurance Company (MEMIC) has the largest market share. Their share fell from 67% of the commercially insured market in 1995 to 45% in 1999. That trend began to reverse in 2000. MEMIC's market share is now approximately 65%.

In 2005, market share of the top 10 insurer groups was 96%. Other groups wrote only 4% of the workers' compensation premium in Maine. In terms of dollar amounts, MEMIC wrote nearly \$161 million in premium in 2005, over \$4 million more than it did in the previous year. The top three groups, including MEMIC, wrote over \$195 million in business, over \$3 million more than in 2004. The top five groups had over \$217 million in written premium, more than \$10 million above the prior year. The top 10 groups wrote over \$238 million in premium in 2005, over \$9 million more than in 2004. The remaining groups had written premium of less than \$10 million, down by over a half million dollars from the previous year.

**Exhibit V. Combined Market Share  
by Insurer Group, 1999-2005**



Source: Annual Statements Filed with the Bureau of Insurance

## **Number of Carriers in the Maine Insurance Market**

Since 2000, 57 more insurance carriers have entered Maine's workers' compensation market than have exited. Fourteen new carriers entered the market in the past year and, the number of carriers in the market is at its highest levels. There currently are no significant barriers to entry.

**Table II: Entry and Exit of Workers' Compensation Carriers, 1997-2006**

<b>Year</b>	<b>Number of Carriers</b>	<b>Number Entering</b>	<b>Number Exiting</b>	<b>Net Change (Number)</b>	<b>Net Change (Percent)</b>
2006	267	14	4	10	3.9
2005	257	4	1	3	1.1
2004	254	5	2	3	1.2
2003	251	11	1	10	4.2
2002	241	15	2	13	5.7
2001	228	24	6	18	8.6
2000	210	12	0	12	6.1
1999	198	11	0	11	5.9
1998	187	9	0	9	5.1
1997	178	32	3	29	19.5

Source: Maine Bureau of Insurance Records. This is based upon the number of carriers licensed to transact workers' compensation insurance as of October 1 of each year. Beginning in 2001, the number exiting includes companies under suspension.

## Percent Market Share for the Top Insurance Groups

Table III shows market share by insurance group from 1999-2005. Information by group is more relevant when assessing competition because carriers in a group are under common control and are not likely to compete with one another. MEMIC's share is expected to be high, since it services all employers who do not obtain coverage in the voluntary market. Though MEMIC's market share decreased a tad from 2004 to 2005, the 20% increase in market share since 1999 signifies that there is less competition. To get a more complete picture, it would be necessary to look at the number of employers insured with each carrier.

INSURANCE GROUP	2005 Share	2004 Share	2003 SHAR E	2002 SHAR E	2001 SHAR E	2000 SHAR E	1999 SHAR E
Maine Employers' Mutual	64.8	65.4	61.5	54.4	51.5	51.2	44.7
Liberty Mutual Group	8.4	9.4	9.6	10.4	7.9	9.5	7.0
WR Berkeley Corp.	5.6	5.4	5.8	6.5	7.4	7.5	7.7
American International	5.1	4.1	3.3	*	*	*	*
Hartford Fire & Casualty	3.8	1.9	2.0	3.1	5.4	6.4	9.1
Guard Insurance Group	2.1	2.0	1.8	1.2	1.0	*	*
Allmerica Financial Corp.	1.9	1.7	1.6	2.6	2.0	2.2	2.1
St. Paul Travelers Group	1.6	2.3	1.1	1.6	1.1	*	*
ACE Ltd	1.6	0.5	*	*	*	*	*
CNA Insurance Group	1.1	0.5	*	*	*	*	*
Zurich Insurance Group	*	0.9	0.8	1.2	1.0	*	*

Source: Annual Statements Filed with the Bureau of Insurance

### Notes:

\* Indicates group was not among the top 10 groups for written premium that year.

## Percent Market Share for the Top Insurance Carriers

Table IV shows the percent of market share for the top carriers for each calendar year from 1999 through 2005. For the second straight year, MEMIC maintains approximately 65% market share. Once again, none of the other carriers attained a five percent market share. The top ten companies combined write nearly 83% of the business. No carrier outside the top 10 accounts for more than one percent of the written premium.

**TABLE IV. PERCENT MARKET SHARE FOR TOP INSURANCE CARRIERS, BY AMOUNT OF WRITTEN PREMIUM, 1999-2005**

INSURANCE CARRIER	2005 SHAR E	2004 SHAR E	2003 SHAR E	2002 SHAR E	2001 SHAR E	2000 SHAR E	1999 SHAR E
Maine Employers' Mutual	64.8	65.3	61.5	54.4	51.5	51.2	44.7
Acadia Insurance Company	4.3	4.4	5.3	6.0	6.8	7.0	7.6
Peerless Ins. Co.	2.2	2.3	2.3	2.3	1.5	*	*
Commerce & Industry	2.1	2.1	1.2	*	*	*	*
Twin City Fire Ins Co.	2.0	0.9	*	*	*	*	*
Hanover Insurance Co.	1.7	1.8	2.0	1.9	3.3	2.5	1.8
Liberty Insurance Corp.	1.7	1.1	1.4	1.2	1.1	*	*
Norguard	1.6	2.0	1.9	1.7	2.0	1.3	
Liberty Mutual Ins. Co	1.3	1.4	0.9	1.1	1.3	*	1.4
Liberty Mutual Fire Ins Co	1.0	1.4	1.6	1.4	0.9	*	*
Employer's Ins. Of Wausau	*	1.0	0.9	*	*	*	*
Excelsior Insurance Co.	*	0.8	1.1	*	*	*	*

Source: Annual Statements Filed with the Bureau of Insurance

**Notes:**

\* Indicates carrier was not among the top 10 carriers for written premium that year.

## **5. DIFFERENCES IN RATES AND FACTORS AFFECTING RATING**

### **Rate Differentials**

Competitive rating allows companies to target particular segments of the market. A company with expertise in certain areas may be able to utilize that proficiency to lower the rate for specific risks and try to return an acceptable profit to the carrier. For example, an insurer may specialize in underwriting employers in a specific industry, such as wood products manufacturing (including logging), healthcare, trucking or construction.

There are a wide range of rates, but most employers are not able to get the lowest rates. Insurers are selective in accepting risks for the lower-priced plans. Their underwriting is based on such things as prior-claims history, safety programs and classifications. An indication that the current workers' compensation market may not be fully price competitive is the distribution of policyholders among companies with different loss cost multipliers or among a single company with multiple rating tiers. The Bureau of Insurance did a survey of the top ten groups and all of the companies within their insurance groups. We asked for the number of policyholders and the amount of written premium for in-force policies in Maine within each of their rating tiers. Together the carriers that reported accounted for over 96% of over \$248 million in written premium in Maine for calendar year 2005. The results show that 80% of policyholders are in or are written at rates equivalent to Maine Employers' Mutual Insurance Company's (MEMIC) Standard rating tier. Nearly nine percent of policyholders have policies written at rates that are above MEMIC's Standard Rating tier. This is slightly lower than the percentage reported last year. One indication that the market may be softening is that five percent more policyholders this year than last year are receiving rates below MEMIC's Standard tier pricing. Currently, about 11 percent have rates lower than MEMIC's Standard Rating tier.

Possible reasons for policyholders accepting rates higher than MEMIC's Standard Rating tier are: 1) an insurer, other than MEMIC, provides workers' compensation coverage, even though they might not otherwise, because they provide coverage for other lines of insurance and the insurer provides a good overall package to the insured; 2) an insurer, other than MEMIC, charges a higher rate but offers a sufficient amount of credits to lower the overall premium; 3) the insured has chosen to purchase all coverages from the same insurer or producer, 4) The insured was placed in MEMIC's High Risk Rating tier because of its poor loss history. The following table illustrates the distribution of workers' compensation policyholders.

<b>Percent of Reported Policyholders At, Above or Below MEMIC's Standard Rating Tier Rates</b>		
<b>Rate Comparison</b>	<b>2005 Percent</b>	<b>2006 Percent</b>
Below MEMIC Standard Rate	5.02%	10.79%
At MEMIC Standard Rate	85.42%	80.32%
Above MEMIC Standard Rate	9.56%	8.89%

Note: Based upon the results of a survey conducted by the Bureau of Insurance. Respondents included carriers in the top 10 insurance groups in Maine.

## **Additional Factors Affecting Premiums**

Some employers have other options available that may affect the premiums they pay for workers' compensation insurance. However, each of these options is available only if the insurer is willing to write a policy using them. In the bureau's survey of insurers in the top 10 groups, mentioned on the previous page, we found that the ratio of credits to debits was over five to one. That is, over five dollars in credits are issued for every one dollar in debits. Additionally, nearly five million dollars in dividends were paid out, with just over 80 percent of those dividends issued by MEMIC.<sup>1</sup>

Employers should carefully analyze certain options, such as retrospective rating (retros) and large deductible policies, before deciding on them. Below is a description of each:

- Tiered rating** means that an individual carrier has more than one loss cost multiplier to use, based on where a potential insured falls in its underwriting criteria. It may apply to groups of insurers that have different loss cost multipliers for different companies in the group. Our records indicate that 81% of companies either have different loss cost multipliers on file or are part of a group that does.
- Scheduled rating** allows the insurance company to consider other factors that may not be reflected in an employer's experience rating when determining an individual employer's premium. Elements such as safety plans, medical facilities, safety devices and premises are considered and can result in a change in premium of up to 25%. Over two-thirds of the insurance companies with filed rates in Maine have received approval to utilize scheduled rating.
- Small deductible plans** shall be offered by insurance carriers. Carriers must offer medical benefit deductibles in the amounts of \$250 per occurrence for non-experience rated accounts and either \$250 or \$500 per occurrence for experience rated accounts. Carriers must also offer deductibles of either \$1,000 or \$5,000 per claim for indemnity benefits. Payments are initially made by the insurance carrier and then reimbursed by the employer. The table below lists, effective January 1, 2007, the percentage reduction in the advisory loss costs received for electing small deductibles.

Deductible Amount	Percentage
\$1,000 Per Claim for Indemnity Payments	0.9%
\$5,000 Per Claim for Indemnity Payments	3.0%
\$250 Per Occurrence for Medical Payments	1.3%
\$500 Per Occurrence for Medical Payments	2.7%

- Managed Care Credits** are credits offered by carriers to employers who use managed care plans. Sixteen percent of insurers offer managed care credits.
- Dividend Plans** provide a return premium to the insured after the policy expires if losses are lower than average. Premiums are not increased if losses are greater than average. Because losses may still be open for several years after policy expiration, dividends will usually be paid periodically with adjustments for any changes in the amount of incurred losses. Dividends are not guaranteed.
- Retrospective rating** means that an employer's final premium is a direct function of its loss experience for that policy period. If an employer controls its losses, it receives a reduced premium; conversely, if

the employer has a bad loss experience, it receives an increased premium. Retrospective rating utilizes minimum and maximum amounts for a policy and is typically written for larger, sophisticated employers.

- **Large deductible plans** are for employers who agree to pay a deductible that can be in excess of \$100,000 per claim. The insurance company is required by law to pay all losses associated with this policy and then bill the deductible amounts to the insured employer. The advantages of this product are discounts for assuming some of the risk. It is an alternative to self-insurance.
- **Loss Free Credits** may be given to employers who have had no losses for specified periods of time. Nearly 66 percent of MEMIC's non-experience rated accounts currently receive loss free credits of between eight and 25 percent.

<sup>1</sup> In October, 2006, MEMIC announced that its Board of Directors voted to pay out \$12 million in dividends to over 20,000 company policyholders. The dividend is based upon premium paid to MEMIC on 2003 policies.

## 6. ALTERNATIVE RISK MARKETS

### Percent of Overall Market Held by Self-Insured Employers

Self-insurance plays an important role in Maine's workers' compensation market. Self-insured employers pay for losses with their own resources rather than by purchasing insurance. They may, however, choose to purchase insurance for losses that exceed a certain limit. One advantage of being self-insured is better cash flow. Since there are no premiums, the employer retains the money until it pays out on losses. Employers who self-insure anticipate that they would be better off not paying premiums and are likely to have active programs in safety training and injury prevention. In 2005, the percent of Maine's total workers' compensation insurance market represented by self-insured employers and groups was 40.3%. This was slight decrease from the prior year and was its lowest level since 1991.

The estimated standard premium for individual self-insurance is determined by taking the advisory loss cost and multiplying it by a factor of 1.2, as specified in statute, and multiplying that figure by the payroll amount divided by 100 and then applying experience modification. As advisory loss costs, and therefore rates, decline, so does the estimated standard premium. Group self-insurers determine their own rates subject to review by the Bureau of Insurance.

**Table VI: Estimated Standard Premium for Self-Insured Employers and Percent of the Workers' Compensation Market Held by Self-Insurers, 1996-2005**

Year	Estimated Standard Premium	Percent of Workers' Comp. Market (in annual standard premium)
2005	\$167,278,509	40.3
2004	\$171,662,347	41.7
2003	\$182,379,567	43.1
2002	\$167,803,123	43.0
2001	\$159,548,698	43.9
2000	\$126,096,312	42.1
1999	\$116,028,759	45.4
1998	\$120,799,841	49.0
1997	\$147,851,730	49.9
1996	\$167,983,925	51.5

Source: Annual Statements Filed with the Bureau of Insurance.

**Notes:** Estimated standard premium figures are as of December 31.

The percent of the workers' compensation market held by self-insured employers is calculated by taking the estimated standard premium for self-insured employers, dividing it by the sum of the estimated standard premium for self-insured employers and the written premium in the regular insurance market, and then multiplying that figure by 100.

2003 Estimated Standard Premium was revised to reflect updates to information by one self-insured group.

## **Number of Self-Insured Employers and Groups**

As of October 1, 2006 there were 20 self-insured groups representing approximately 1,437 employers as well as 71 individual self-insured employers in Maine. The number of self-insured groups remained the same over the past three years. The number of employers in self-insured groups has increased by over 16% since 2002. Conversely, the number of individually self-insured employers has decreased by 54% over the past ten years.

**Table VII: Number of Self-Insured Groups, Employers in Groups, and Individually Self-Insured Employers 1997-2006**

Year	# of Self-Insured Groups	# of Employers In Groups	# of Individually Self-Insured Employers
2006	20	1437	71
2005	20	1,416	80
2004	20	1,417	86
2003	19	1,351	91
2002	19	1,235	98
2001	19	1,281	92
2000	19	1,247	98
1999	20	N/A	115
1998	21	N/A	118
1997	21	N/A	155

Source: Bureau of Insurance Records

### **Notes:**

For the purposes of self-insurance, affiliated employers are considered separate employers. N/A indicates that the information is not available.

- The number of individually self-insured employers and self-insured group information beginning in 2001 is as of October 1 of the year listed. Figures for years 2000 and before are as of the beginning of the year listed.

## **7. A LOOK NATIONALLY**

### **Manufacturing Industry and Office and Clerical Operations**

Each year Actuarial and Technical Solutions, Inc. collects information from states that is used in a publication entitled Workers' Compensation State Rankings--Manufacturing Industry Costs and Statutory Benefit Provisions. Until 2005, the study ranked workers' compensation rates charged in the manufacturing sector only. In response to inquiries about the cost of workers' compensation in other sectors, Actuarial and Technical Solutions began publishing information on office and clerical employees. This includes classes such as accountants, engineers, school professionals, attorneys and other office and clerical employees.

In the 2006 study, Maine ranked 27th in workers' compensation average statutory benefit provisions (wage replacement benefits). Our rank in 2005 was 28<sup>th</sup>. All fifty states were ranked. A lower rank indicates lower the statutory benefits. In addition to statutory benefit provisions, states were ranked by comparative cost for both office and clerical and for manufacturing. In 2006, Maine ranked 35th in office and clerical and 27<sup>th</sup> in manufacturing. We were ranked 34th and 28<sup>th</sup> respectively in 2005. This means that our comparative costs improved one position in manufacturing and fell one position in office and clerical relative to other states.

### **Oregon Workers' Compensation Premium Rate Ranking**

In another study, conducted bi-annually by the State of Oregon, Maine ranked 8<sup>th</sup> in terms of 2006 workers' compensation premium rates for all industries. In this study, a lower rank indicates higher premium rates. In the 2004 study, Maine ranked 13<sup>th</sup> overall and in the 2002 study, Maine also ranked 8<sup>th</sup>. This study focused on 50 classifications based on their relative importance as measured by their share of losses in Oregon. Results are reported for all 50 states and for the District of Columbia.

## Average Loss Costs by State Based Upon Maine's Payroll Distribution

Finally, the National Council on Compensation Insurance (NCCI) developed a spreadsheet which shows the average loss cost for Maine compared to the average loss cost for other states based upon Maine's payroll distribution. Maine had the tenth highest average loss costs of the 35 states reporting information to NCCI.

State	Average Loss Cost	Rank
Indiana	\$0.91	1
Virginia	\$1.07	2
Arizona	\$1.20	3
Kansas	\$1.20	3
Utah	\$1.20	3
South Carolina	\$1.25	6
South Dakota	\$1.28	7
District of Columbia	\$1.31	8
Iowa	\$1.32	9
Maryland	\$1.38	10
Nevada	\$1.42	11
Oregon	\$1.47	12
Georgia	\$1.50	13
Idaho	\$1.51	14
New Mexico	\$1.51	14
North Carolina	\$1.55	16
Mississippi	\$1.57	17
Rhode Island	\$1.58	18
Missouri	\$1.59	19
Hawaii	\$1.60	20
Tennessee	\$1.60	20
Nebraska	\$1.62	22
Colorado	\$1.64	23
Oklahoma	\$1.72	24
Connecticut	\$1.75	25
Illinois	\$1.95	26
Maine	\$1.97	27
New Hampshire	\$1.99	28
Florida	\$2.09	29
Louisiana	\$2.10	30
Kentucky	\$2.15	31
Vermont	\$2.15	31
Alabama	\$2.19	33
Alaska	\$2.89	34
Montana	\$3.32	35

Note: Average loss cost does not include expense and profit loading and is an average using all payroll. The actual average for an employer will depend on the type of business and payroll mix.

The relatively high total payroll and relatively low loss cost for the clerical classification causes the statewide average to be lower.

**SECTION C**  
**BUREAU OF LABOR STANDARDS**



## **SECTION C. BUREAU OF LABOR STANDARDS**

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## 1. INTRODUCTION

### **1A. ROLE OF THE BUREAU OF LABOR STANDARDS IN PROTECTING MAINE WORKERS**

The Bureau of Labor Standards (BLS) of the Maine Department of Labor (MDOL) works in collaboration with the Maine Workers' Compensation Board (WCB) in the prevention of occupational injuries and illnesses by a variety of means. Under Maine Statute, Title 3 MRSA § 42, the BLS has the power and duties to collect, assort, and arrange statistical data on the number and character of industrial accidents and their effects upon the injured. Title 26 MRSA § 42-A also charges the BLS with establishing and supervising safety education and training programs. Additionally, MDOL is responsible for overseeing the employer-employee relationship in the state through enforcement of Maine labor laws and the related rules and standards. By accomplishing its mandated functions, the BLS complements the WCB in prevention of workplace injuries and illnesses in Maine.

To successfully accomplish its functions, the BLS works with the WCB to gather data relative to injuries and illnesses sustained by Maine workers. The BLS and the WCB collect their data through several mechanisms. Both agencies strive for the highest quality of available data. The BLS administers the following data collection programs: 1) the federal Bureau of Labor Statistics' Survey of Occupational Injuries and Illnesses (SOII), 2) the federal Occupational Safety and Health Administration's (OSHA) Data Initiative (ODI), and 3) the Census of Fatal Occupational Injuries (CFOI). The WCB collects data from its *First Report of Occupational Injury or Disease* forms. Using the WCB administrative tracking system, the BLS electronically imports the contents of the WCB *First Reports* for analysis and as supplements to its own data. The combined information is then used in benchmarking and prioritizing BLS workplace safety activities such as training, education, advocacy, and public sector enforcement.

A number of significant areas of employment have low levels of coverage by the WCB, notably commercial fishing and agriculture. Since the responsibilities of the MDOL extend to all Maine workers, the BLS is working to build means to acquire the data to allow assessment of services needed in these areas as well. This report, however, is largely limited to industries in common between the WCB system and the BLS.

### **1B. ORGANIZATION OF THIS REPORT**

The report is organized to provide as complete as possible a picture of the prevention of occupational injuries and illnesses, including enforcement activities.

- **Part 2** of this report will describe the workplace injury and illness prevention activities of the BLS and its partners in the occupational safety and health (OSH) community, including outreach, advocacy, and enforcement.
- **Part 3** will present research programs of the BLS and some resulting data and conclusions.

- **Part 4** will discuss how current information gathering and sharing can be improved and provide an update on the initiative in this area.
- **Part 5** will outline 2006 developments and some prospects for the immediate future.

## 2. PREVENTION SERVICES AVAILABLE

### 2A. SAFETYWORKS!

SafetyWorks! is an identity that encompasses the occupational safety and health (OSH) training, consultation and outreach functions of the BLS. Under its umbrella, a variety of free services are made available to Maine employers, employees, and educators. These activities include use of the WCB data to supplement the federal Bureau of Labor Statistics and OSHA data to respond to requests for information from the OSH community and the general public on the safety and health status of Maine workers.

SafetyWorks! instructors may design their safety training programs based on industry profiles generated from data from the WCB *First Reports* among other sources. By analyzing the WCB data, SafetyWorks! instructors and consultants can see what types of injuries and illnesses are prevalent in different industry sectors in Maine. This information allows outreach and education activities to be tailored to those employers and their needs. For example, the Outreach and Education Unit (O&E) uses the age and industry profiles from the WCB *First Reports* to target its young workers' safety initiatives.

#### *Employer and Employee Training and Education*

**General OSH Training.** SafetyWorks! develops and offers industry-specific and problem-specific training. WCB data can suggest the need for and direct the targeting of such training. In addition to such targeted training programs, the BLS provides OSHA and Mine Safety and Health Administration (MSHA) approved regulatory compliance training. Approximately 50 different curricula of all types are offered, ranging in scope from 30-hour OSHA compliance courses to such tightly focused efforts as VDT operator training requiring as little as two hours. Some of this training is offered centrally and some is worksite-delivered at employer request. In fiscal 2006, 532 safety classes were completed with 7,630 attendees.

**Child Labor Education.** A special emphasis of O&E is the education of young workers. To encourage employers to provide safe work experiences for their teenage workers, the BLS developed the curriculum, *Starting Safely: Teaching Youth about Workplace Safety and Health*. The three-hour curriculum is designed to teach middle and high school age youth about their safety rights and responsibilities on the job. In 2002, O&E was authorized by Keene State College (New Hampshire) to present to educators the train-the-trainer course that allows the teachers to use this curriculum. The train-the-trainer course complements the Summer Safety Institute for Educators, which O&E has offered in conjunction with the University of Southern Maine since 1993. The 2006 Summer Safety Institute was conducted at the University of Southern Maine (June 19 – 23) with 28 participants. A Summer Safety Institute Update (train-the-trainer) was held at the SafetyWorks! Training Institute June 14-16, 2006, with 5 participants. An OSHA 30-hour General Industry course for teachers was presented at the United Technologies Center August 28 through November 27, 2006, with 29 participants.

### ***Employer Consultation***

**Employer Profiles.** Using the data from the WCB's *First Reports* and SOII, the Research and Statistics Unit (R&S) of the BLS can provide a Maine employer with a profile of that employer's injury and illness experience over a number of years. Such a profile shows the type of disabling injuries or illnesses that have been experienced by the company's workers. This profile also describes the nature of the injury or illness and the event or exposure that led to each incident. The employer uses this information in detecting patterns in developing/refining the company safety program. In 2006, 102 profiles were requested.

**On-Site Consultation.** Also under SafetyWorks!, the Workplace Safety and Health Division (WS&H) of the BLS provides consultation services to public and private sector employers. In the private sector, BLS provides consultations to employers identified by Regional OSHA for inspection through its Local Emphasis Programs (LEPs). National and Regional OSHA identify employers for LEPs and National Emphasis Programs (NEPs) based on summary data from the WCB and the OSHA Data Initiative (ODI). Consultations are also provided in both the public and private sector upon employer request. A typical employer consultation can include an evaluation of records from the employer, including an analysis of the employer's Workers' Compensation cases and/or the OSHA Log, an environmental evaluation (a walk-through), and an examination of the work processes. Consultations are advisory and cooperative in nature and in fiscal 2006, 1,087 consultations were requested.

For more on SafetyWorks!, go to [www.safetyworksmaine.com](http://www.safetyworksmaine.com).

### **2B. ADVOCACY**

The Migrant and Immigrant Services Division (M&IS) coordinates services for migrant and foreign workers in Maine. The Division has a State Monitor Advocate who works with agricultural employers for compliance with the federal Seasonal Agricultural Worker Protection Act and the Fair Labor Standards Act. The State Monitor Advocate monitors the payment of fair wages and ensures that the housing provided to these workers meets OSHA standards. In addition to addressing the safety and health of migrant and foreign workers, M&IS provides foreign labor certification services to Maine employers who wish to hire foreign workers. In 2006, a total of 272 employers were processed seeking 3,482 foreign workers of all types.

### **2C. ENFORCEMENT**

#### ***Child Labor Work Permits***

To protect young workers, the Wage and Hour Division of the BLS reviews and approves between 4,000 and 6,000 minor work permit applications each year. From July 1, 2005 to July 1, 2006, a total of 4,418 work permits were approved and 192 permits were denied.

### ***Wage and Hour Enforcement***

In addition to the issuance of work permits, the Wage and Hour Division inspects employers for compliance with Maine wage and hour and child labor law, which has an occupational safety and health component. The Division uses the data from the WCB *First Reports* to select employers for inspection -- based on the age variable, an industry profile showing where young workers were injured can be generated. Employers are also identified for inspections based on combinations of certain administrative criteria or complaints. From July 1, 2005 to July 1, 2006 the Division conducted 3,222 inspections finding 410 employers in violation with 787 separate violations.

### ***Public Sector Site Safety Inspections***

The Workplace Safety and Health Division of the BLS (WS&H) enforces safety regulations based on OSHA standards *in the public sector only* and is therefore responsible for the health and safety of employees of state and local governments. WS&H prioritizes state and local agencies for inspection based on the agencies' injury and illness data from the WCB, the results of the Survey of Occupational Injuries and Illnesses (SOII), or complaints from employees or employee representatives. WS&H compliance officers conduct unannounced inspections of the work environment and can cite the state and local employers for non-compliance with safety and health standards, which may carry fines. Failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be asked to shut down the operation; this shutdown is not mandatory, however. By way of comparison with OSHA activity in the private sector (below), 588 inspections were completed in federal fiscal year 2006. These inspections detected 3,335 violations resulting in \$436,425 in penalties after reductions for size of business and good faith abatement efforts.

### ***Private Sector Site Safety Inspections (Federal)***

In Maine, the United States Department of Labor Occupational Safety and Health Administration (OSHA) enforces federal workplace health and safety standards in the private sector in parallel with the BLS enforcement in the public sector. OSHA prioritizes employers for inspection based on the employers' injury and illness data from the OSHA Data Initiative (ODI), Local Emphasis Programs (LEPs) or National Emphasis Programs (NEPs) (typically developed using the ODI), or complaints from employees or employee representatives. OSHA compliance officers likewise conduct unannounced inspections of the work environment and can cite employers for non-compliance with safety and health standards, which usually carry fines. As in the public sector, failure to address and abate deficiencies may result in additional fines. In situations where an operation or a process poses an immediate danger to the life or health of workers, the employer may be required to shut down the operation. Data for federal fiscal year 2006 show that OSHA conducted 609 inspections in Maine. These inspections detected 1,330 violations, resulting in \$947,793 in penalties assessed.

### **3: RESEARCH AND DATA AVAILABLE**

Effective workplace injury and illness prevention services cannot be designed and delivered without a detailed working knowledge of all factors that contribute to OSH. This knowledge is gained by OSH research, through both indefinitely continuing programs and one-time, focused studies.

#### **3A. ANNUAL STUDIES**

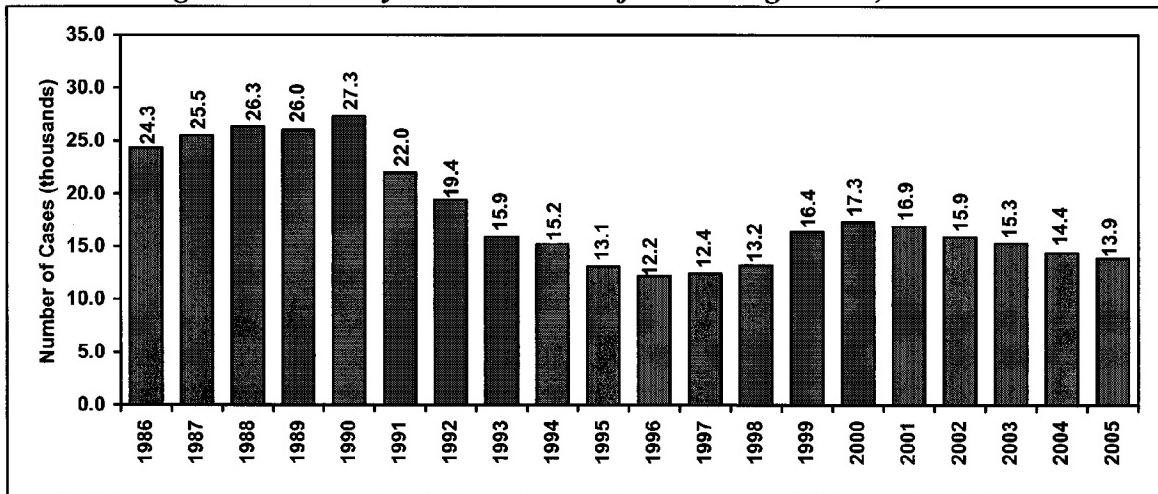
The Research and Statistics Unit (R&S) in the Technical Services Division (TSD) of the BLS is responsible for the administration of several annual OSH surveys. Taken together, the results of these surveys provide an epidemiological profile of occupational injuries and illnesses in Maine. For each of them, more information and statistics are available on the BLS website, [www.maine.gov/labor/bls/](http://www.maine.gov/labor/bls/), or upon request.

##### **WCB First Report of Occupational Injury or Disease**

Since 1973 the BLS has coded, tabulated, analyzed, and summarized data from the WCB *First Reports*. This activity began as a program called the Supplementary Data System (SDS) funded by the federal Bureau of Labor Statistics. When federal funding ended, this program was continued with state funding. The BLS database is directly linked to the WCB administrative data for each case and provides, therefore, a wealth of information on individual cases. This tabulation is the primary data source for BLS prevention purposes because it is possible to examine many dimensions, including the individual employer, the age of the injured, how long the injured person has worked, the injured's occupation, and so on. Because the data are tied to the WCB administrative data, the consistency and completeness of that administrative data is critical. The BLS analyzes the WCB data and publishes a report titled "*Characteristics of Work-related Injuries and Illnesses in Maine*", which provides descriptive statistics on all disabling work-related injuries and illnesses. This and other BLS reports can be accessed at the BLS website. The following are some data from this program.

**A Twenty-Year Pattern of Disabling Cases, Maine, 1986-2005.** In 2005, there were 13,959 disabling cases reported to the Maine Workers' Compensation Board. A disabling case is a case in which a worker lost one or more days of work beyond the day of the injury. Figure 1 shows the twenty-year pattern of disabling cases. The 2005 figure shows a decrease of 445 cases from 2004. This is the fifth straight year this figure has decreased.

**Figure 1. Twenty-Year Pattern of Disabling Cases, 1986-2005**



Source: Workers' Compensation Board *First Reports of Occupational Injury or Disease*

Changes as a result of the 1990 workers' compensation reform decreased the number of reports, partly accounting for the apparent decline after that year. In 1999, the introduction of the WCB's Monitoring and Enforcement (MAE) program increased the number of reports for non-compensable (less than 7 days) lost time cases, producing part of the apparent increase in that and following years. Independent data from the SOII, whose definitions and process were stable from 1983 through 2001, provide a check against such artificial variation caused by procedural changes. SOII data also show a shift from days away from work to days of restricted activity (see below for discussion), which affects the shape of the curve in recent years.

**Geographic Distribution of Disabling Cases, Maine, 2003-2005.** In 2005, the six counties with the highest disabling case rates were (in descending order): Sagadahoc (consistently highest by almost a factor of two), Cumberland, Kennebec, Aroostook, Androscoggin, and Knox counties. Table 1 describes the distribution of disabling cases by counties for 2003 through 2005. The rate is calculated by dividing the number of disabling cases in each county by its respective employment in thousands. Geographic distribution data can be useful in health planning and setting enforcement and consultation priorities by region.

**Table 1. Geographical Distribution of Disabling Cases, Maine, 2003-2005**

County	2003			2004			2005		
	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000	Cases	Employment	Rate Per 1,000
Androscoggin	1,435	54,246	26.5	1,203	54,495	22.1	1,192	55,192	21.6
Aroostook	766	32,863	23.3	693	32,839	21.1	762	33,302	22.9
Cumberland	3,914	148,677	26.3	3,777	151,298	25.0	3,551	153,371	32.2
Franklin	250	13,655	18.3	229	13,924	16.4	252	14,090	17.9
Hancock	569	28,239	20.1	541	28,518	19.0	561	28,893	19.4
Kennebec	1,500	58,765	25.5	1,365	59,218	23.1	1,436	60,116	23.9
Knox	454	20,763	21.9	471	21,025	22.4	420	20,978	20.0
Lincoln	279	17,328	16.1	282	17,671	16.0	284	17,937	15.8
Oxford	474	26,478	17.9	470	26,710	17.6	445	27,156	16.4
Penobscot	1,568	73,516	21.3	1,527	73,233	20.9	1,452	74,853	19.4
Piscataquis	144	6,993	20.6	126	6,960	18.1	132	7,063	18.7
Sagadahoc	883	17,867	49.4	790	18,185	43.4	678	18,084	37.5
Somerset	601	23,062	26.1	514	23,004	22.3	413	23,279	17.7
Waldo	285	18,895	15.1	291	18,722	15.5	250	18,758	13.3
Washington	280	14,270	19.6	297	14,175	21.0	245	14,491	16.9
York	1,580	104,892	15.1	1,527	107,235	14.2	1,487	109,862	13.5
Unknown*	337	----	----	301	----	----	399	----	----
Total	15,319	660,415	23.2	14,404	667,212	21.6	13,959	677,429	20.6

**Source:** Case data from Workers' Compensation Board *First Reports of Occupational Injury or Disease*.

Employment data from Labor Market Information Services, Maine Department of Labor.

\* Unknown represents WCB *First Reports* with missing information.

**Disabling Cases by Occupational Groups, Maine, 2005.** In 2005, occupations were classified using the new Standard Occupational Classification (SOC) system in which neither the major groups nor specific occupations are directly comparable with those used in previous years. Therefore, Table 2 presents only 2005 data without reference to earlier years.

As seen in Table 2, more than two thirds of all reports of disabling injuries in 2005 occurred in the top seven occupational groups. With nearly 70% of disabling injuries occurring in these occupational groups, further research is needed in assessing trends and patterns of injuries and illnesses reported in these occupations. In addition, more work should be done to identify the risk factors, demographics, and the type of safety training programs that are being offered to workers and the effectiveness of such training in preventing work-related injuries.

**Table 2: Disabling Cases by Occupational Groups, Maine, 2005**

Occupational Groups	2005	
	Number	Percent
Transportation and Material Moving	2,317	16.6
Construction and Extraction	1,633	11.7
Production	1,438	10.3
Office and Administrative Support	1,187	8.5
Sales and Related	991	7.1
Building and Grounds Cleaning and Maintenance	981	7.0
Installation, Maintenance, and Repair	978	7.0
Other Occupational Groups	4,434	31.8
Total	13,959	100.0

Source: Workers' Compensation Board *First Reports of Occupational Injury or Disease*

**Length of Service of Injured Worker, Maine, 2003-2005.** One of the patterns that the BLS has identified from the analyses of the WCB data is that more new hires (under one year) are being injured on the job when compared to those employees who have been with their employers for one year or more. New hires accounted for 4,656 (33.4%) of the *First Reports* in 2005. This high representation of new hires has been declining slowly but steadily over the past several years, both in terms of absolute numbers and in percent overall.

At the same time, the representation of long-term (older) workers, those with 15 or more years with the same employer, has increased, from 10.3% in 2001 to 13.9% in 2005.

**Table 3. Length of Service of Injured Worker, Maine, 2003-2005**

Length of Service of the Injured Worker	Disabling Cases					
	2003		2004		2005	
	Number	Percent	Number	Percent	Number	Percent
<b>Total</b>	<b>15,319</b>	<b>100.0</b>	<b>14,404</b>	<b>100.0</b>	<b>13,959</b>	<b>100.0</b>
<b>Under 1 Year</b>	<b>5,066</b>	<b>33.1</b>	<b>4,913</b>	<b>34.1</b>	<b>4,656</b>	<b>33.4</b>
1 Year	1,887	12.3	1,717	11.9	1,745	12.5
2 Years	1,197	7.8	1,111	7.7	1,034	7.4
3-4 Years	1,653	10.8	1,635	11.4	1,464	10.5
5-9 Years	1,813	11.8	1,698	11.8	1,894	13.6
10-14 Years	1,378	9.0	1,138	7.9	797	5.7
15-19 Years	925	6.0	926	6.4	1,034	7.4
20+ Years	968	6.3	858	6.0	903	6.5
Unknown	432	2.8	408	2.8	432	3.1

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*

**Nature, Source, and Event of Injuries and Illnesses, Maine, 2001-2005.** Table 4 gives the top five each of nature, source, and event of injuries and illnesses. There were some shifts in 2005.

**Table 4. Nature, Source and Event of Injuries and Illnesses, Maine, 2001-2005**

	2001	2002	2003	2004	2005
<b>Nature of Injury</b>					
Sprains, strains, tears	5,561	4,991	4,692	4,664	4,965
Unspecified pain, sore, hurt	3,837	3,913	3,863	3,462	3,081
Bruises, contusions	1,122	1,045	1,057	988	1,080
Traumatic injuries & disorders, unspecified	*	*	860	*	*
Fractures	871	720	*	666	755
Cuts, lacerations	784	747	745	726	682
<b>Source of Injury</b>					
Person—injured or ill worker	3,775	3,567	3,417	3,302	3,102
Floors, walkways, ground surfaces	2,569	2,376	2,332	2,055	2,181
Containers	1,775	1,629	1,609	1,513	1,287
Nonclassifiable	*	*	1,270	1,182	1,446
Parts and materials	1,118	1,067	1,009	978	810
Vehicles	956	932	*	*	*
<b>Event or Exposure</b>					
Overexertion	5,231	5,024	4,756	4,415	4,065
Bodily reaction	1,910	1,772	1,688	1,704	1,799
Fall on same level	1,791	1,584	1,631	1,313	1,515
Struck by object	1,302	1,207	1,321	1,160	1,119
Repetitive motion	1,299	1,222	1,208	1,124	929

Source: Workers' Compensation Board *First Reports of Injury or Occupational Disease*

Note: \* indicates that the specific nature and source of injury was not in the top five categories.

### ***Federal Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses***

Also since 1972, the BLS has partnered with the federal Bureau of Labor Statistics in a cooperative agreement to collect data on occupational injuries and illnesses through the annual Survey of Occupational Injuries and Illnesses (SOII). The results from this survey are summarized and published on the Federal BLS website, <http://stats.bls.gov/iif/oshstate.htm>. The data are generated from a random sample stratified by industry and work establishment size. There are around 2,500 employers in the sample in any given year. For the year 2005, BLS surveyed 2,888 private establishments and 513 public sector agencies, asking these businesses about their experience with OSHA recordable injuries and illnesses. The SOII gathers data from employers' records. Besides the total numbers of OSHA-recordable injuries and illnesses, the SOII asks employers for their average employment and total hours worked at the reporting worksite. From this information, incidence rates are produced.

The SOII incidence rates are calculated using the following formula:

$$\text{Incidence Rate} = (N / EH) * 200,000$$

Where:

N = number of OSHA recordable incidents (injuries and illnesses in the chart below) for an employer or group

EH = total hours worked by all employees during the calendar year in the corresponding group

200,000 = base for 100 full-time equivalent employees (working 40 hours per week for 50 weeks)

The result is the estimated number of incidents per 100 workers, working a standardized workweek for a standardized year.

2001 is the last year for which SOII incident statistics are comparable to the past because of changes made to OSHA recordkeeping beginning with the 2002 data. With the revised regulation instituting use of the OSHA 300 log, sweeping changes were made to the recording criteria; cases formerly recordable now are not and *vice versa*. Among the most significant changes were:

- 1) A new definition of "work-related"
- 2) A new definition of "restricted work activity"
- 3) An all-inclusive list of first aid (*vs.* medical) treatment.

*This means that, although 2002 and later data from employer OSHA records appear similar to 2001 and earlier data, it is neither correct nor safe to make direct comparisons across the 2001/2002 line. For further information on the recordkeeping differences go to OSHA's website, [www.osha.gov](http://www.osha.gov), and click on "recordkeeping".*

The 2002 changes to the recordkeeping regulations apply to 2003 with one important exception. In 2003, OSHA revised its regulations regarding the recording of occupational hearing loss cases. Also in 2003, work establishments were being coded according to the North American Industry Classification System (NAICS), rather than the Standard Industrial Classification (SIC) system. There is not a one-to-one comparability between even the most general levels of the two classification systems. For these reasons, users are advised against comparisons between 2003 and later SOII industry categories and those of previous years.

Table 5 and Figure 2 below display data gathered through the SOII. Data collected from this survey cannot be used for direct comparison with WCB rates for the following reasons:

- 1) The methodology of calculating rates is different
- 2) The two systems use different definitions of recordability of cases
- 3) The WCB data is a census of injuries and illnesses while the SOII data is a statistical sample.

**Cases and Incidence Rate of Injuries and Illnesses, Maine, 2005.** According to the 2005 SOII for the private sector, the Utilities Division recorded the highest incidence rate of 14.7 per 100 FTE.

**Table 5. Number of Cases and Incidence Rate of Injuries and Illnesses, Maine, 2005**

NAICS Sector (Not directly comparable with SIC Division)	2005	
	Number of Cases	Incidence Rate
<b>Private Sector</b>	<b>28,873</b>	<b>7.2</b>
Manufacturing	6,310	10.5
Health Care and Social Assistance	5,228	7.4
Retail Trade	4,976	7.3
Construction	2,332	8.9
Accommodation and Food Services	1,746	5.3
Wholesale Trade	1,578	7.8
Transportation and Warehousing	1,311	9.7
Administration Support and Waste and Remediation Services	1,507	8.8
Finance and Insurance	736	3.2
Professional and Business Services	2,321	5.6
Information	343	3.6
Arts, Entertainment, and Recreation	358	7.6
Agriculture, Forestry, Fishing, and Hunting	214	5.0
Real Estate and Rental and Leasing	221	3.9
Management of Companies and Enterprises	N/P	N/P
Educational Services	317	4.7
Utilities	234	14.7
Mining	N/P	N/P
<b>Public Sector</b>	<b>3,620</b>	<b>6.3</b>

Source: Federal Bureau of Labor Statistics *Survey of Occupational Injuries and Illnesses*  
Note: "N/P" means not publishable

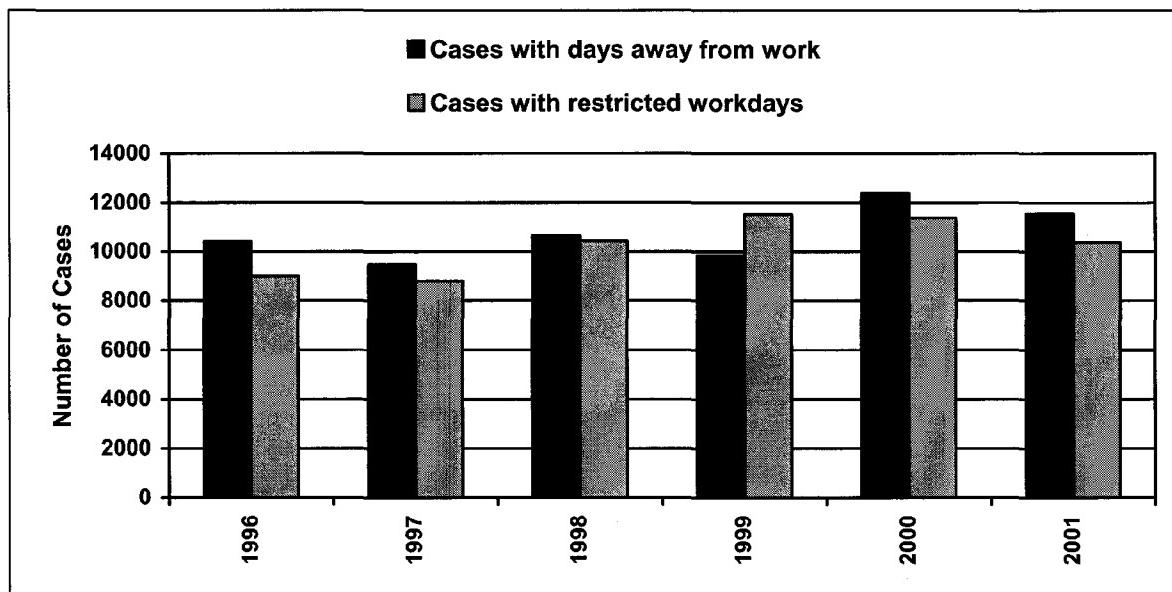
For further information on OSHA recordkeeping, please go to OSHA's website, [www.osha.gov](http://www.osha.gov).

**Cases with Lost Workdays and Restricted Work Activity.** Data collected from 1992 through 2001 show a fluctuating downward trend in the reported number of cases resulting in days away from work. However, the number of cases resulting in restricted work activity has increased. The data indicate that employers are placing more injured workers on "light duty". The BLS has hypothesized the following:

- 1) These are not severe injuries and allow an injured worker to continue working in a limited capacity
- 2) Some employers are using this injury management approach to lower their Workers' Compensation losses and therefore lower their direct payments on their insurance premiums
- 3) Keeping workers employed in a limited capacity is seen as good for workers' morale, preventing the turnover of skilled workers and instilling continued company loyalty and increasing productivity.

More research is needed to test these hypotheses.

**Figure 2A. A Six-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public and Private Sectors), Maine, 1996-2001**



Continued next page

**Source:** Survey of Occupational Injuries and Illnesses

**Figure 2B. A Four-Year Trend Analysis of Lost Workday and Restricted Work Activity Cases, All Industries (Public and Private Sectors), Maine, 2002-2005**

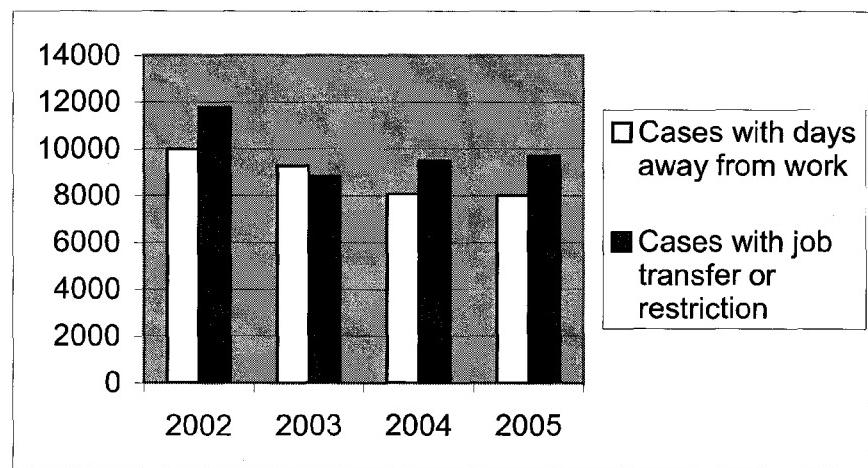


Figure 2B describes the injury data collected with revised OSHA recordkeeping regulations. These data should not be directly compared with earlier years' data (1993-2001) or with each other. For 2005, there was an estimated total of 17,720 OSHA recordable injuries resulting in at least one day away from work or one day of job transfer or restriction beyond the day of injury. Of this total, it is estimated that 8,013 cases resulted in at least one day away from work and 9,707 cases resulted in job transfer or restriction without any days away from work.

#### ***OSHA Data Initiative***

Every year since 1993, the BLS has received a grant from OSHA to collect data on specific worksite occupational injury and illness rates in Maine. The information is used by OSHA to target establishments with high incidence rates for intervention through consultation or enforcement. Usually the regional office of OSHA initiates this under an OSHA Local Emphasis Program (LEP).

The survey instrument used is called the *OSHA Work-Related Injury and Illness Data Collection Form*. The data collected are from the same sources as, but less detailed compared to the SOII survey. OSHA regional offices use the DART ("Days Away, Restricted, or Transferred") incidence rate to identify worksites for intervention. The DART rate is calculated using the incidence rate formula above but with N equal to the number of OSHA-recordable cases resulting in at least one day away from work, and/or at least one day of job transfer or restriction, beyond the day of injury; in other words, the incidence rate for DART cases only.

For example, for the year 2004, 234 Maine worksites were identified as having a DART rate of 7.0 or higher per 100 full-time employees. These businesses were notified by OSHA and encouraged to identify and correct any safety hazards in anticipation of OSHA inspection. Selected employers could conduct their own safety inspections, hire a consultant for that purpose, or utilize safety consultants from an OSHA voluntary safety program such as

SafetyWorks! (specifically mentioned in the OSHA notification). Some were actually inspected for violations by OSHA.

### ***Census of Fatal Occupational Injuries***

Since 1992, the BLS has been in another partnership with the federal Bureau of Labor Statistics to administer the Census of Fatal Occupational Injuries (CFOI) program for Maine. The CFOI program collects data on all fatal occupational injuries and illnesses. The data are published in an annual series titled "*Fatal Occupational Injuries in Maine*".

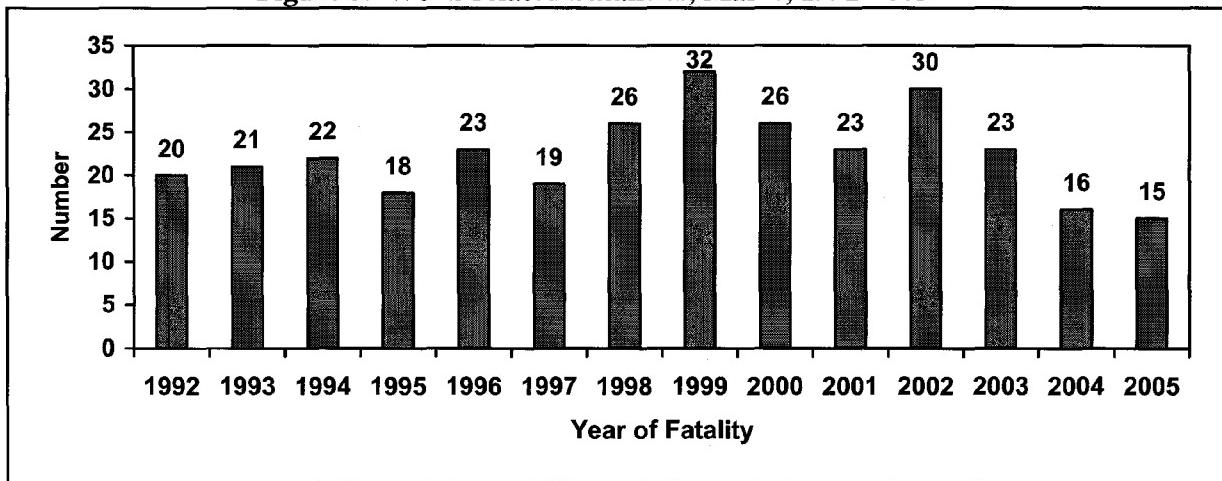
The CFOI program is a federal/state cooperative program. It was created in 1990 by the U.S. Department of Labor, Bureau of Labor Statistics and includes all 50 states and the District of Columbia. The program was established to determine a true count of work-related fatalities in the United States. Prior to CFOI, estimates of work-related fatalities varied because of differing definitions and reporting sources. The CFOI program collects and compiles workplace fatality data that are based on consistent guidelines throughout the United States.

A death is considered work-related if an event or exposure resulted in an employee fatality while in work status, whether at an on-site or off-site location. Private and public sector (state, local, and county government) are included. Fatalities must be confirmed by two independent sources before inclusion in the CFOI. Sources in Maine include death certificates, the WCB *First Report of Occupational Injury or Disease*, and fatality reports from the following agencies and sources: 1) the Chief Medical Examiner's Office; 2) the Department of Marine Resources; 3) the Maine State Police; 4) the Bureau of Motor Vehicles; 5) the U.S. Coast Guard; 6) OSHA reports; and 7) newspaper clippings and other public media.

Only fatalities due to injuries are included in the CFOI. Fatalities due to illness or disease tend to be undercounted because the illness may not be diagnosed until years after the exposure or the work relationship may be questionable. Occupational illnesses are, therefore, excluded from the state CFOI program as required by the Federal Bureau of Labor Statistic that provides funding for this program.

**Fatal Occupational Injuries, Maine, 1992-2005.** Figure 3 shows the numbers of work-related fatalities recorded in Maine from 1992-2005.

**Figure 3. Work-related Fatalities, Maine, 1992-2005**



Source: Maine Census of Fatal Occupational Injuries

#### **Fatal Occupational Injuries by Industry and Event/Exposure, 1992-2005**

Transportation accidents have accounted for more occupational fatal injuries than any other event or exposure in Maine as shown in Table 6. Since 1992, more than 48% of the fatal work-related injuries in Maine collected under the CFOI program were classified as transportation related.

**Table 6. Fatal Occupational Injuries by Industry and Event/Exposure, Maine, 1992-2005**

Industry Division	Total	Trans- portation Accidents Highway & Non- highway	Contact with Objects & Equipment	Falls	Exposure to Harmful Substances	Assaults & Suicides	Fires & Explosions
<b>Total</b>	<b>317</b>	<b>153</b>	<b>68</b>	<b>39</b>	<b>34</b>	<b>17</b>	<b>6</b>
Agriculture, Forestry & Fish.	81	55	4	4	18	--	--
Manufacturing	50	11	29	10	--	--	--
Transportation & Public Utilities	50	37	6	3	4	--	--
Construction	38	5	11	14	8	--	--
Services	28	11	11	3	--	3	--
Retail	20	10	--	4	--	6	--
Government	14	9	--	--	--	5	--
Wholesale	13	13	--	--	--	--	--
Other/Nonpublishable & Unknown	23	2	7	1	4	3	6

Source: Census of Fatal Occupational Injuries

-- Dashes indicate less than .5 percent or do not meet publication criteria.

### ***Employer Substance Abuse Testing***

Not a part of the OSH profile, but still in support of occupational injury and illness prevention is the annual "Substance Abuse Testing Report" compiled by the BLS. The Maine Substance Abuse Testing Law, Title 26 MRSA, Section 680 et seq., requires the MDOL to report to the legislature on activities under that statute. The "**Substance Abuse Testing Report**" data do not include activities under federally mandated testing programs. Therefore, these data should not be taken as a comprehensive representation of workplace substance abuse testing in Maine.

The Maine Substance Abuse Testing Law controls employer drug testing that is not performed in response to federal mandates. Therefore, the Bureau of Labor Standards also must review and approve the proposed testing policy of any company that wants to have a substance abuse testing program but is not required to under federal law. BLS can supply employers with a model substance abuse testing policy to assist in developing an acceptable workplace-specific policy, another prevention-directed activity.

The Maine Substance Abuse Testing Law is intended to protect the privacy rights of employees, yet allow an employer to administer testing; to ensure proper testing procedures; to ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment; and to eliminate drug use in the workplace. Regulation of testing for use of controlled substances has been in effect under Maine law since September 30, 1989.

The administration of this law is a collaborative effort of the following agencies.

- 1) The Maine Department of Labor, which:
  - Reviews and approves substance abuse testing policies,
  - Conducts the annual survey of substance abuse testing,
  - Analyzes testing data and publishes the annual report, and
  - Provides model policies -- a model job applicant testing policy was developed by the MDOL in 1998 and a model probable cause testing policy in 2000 -- to help employers write substance abuse policies for their workplaces.
- 2) The Maine Department of Health and Human Services (DHHS), which licenses testing laboratories and the Office of Substance Abuse Services within DHHS which reviews and approves employee assistance programs (EAPs) for employers who do probable cause or random and arbitrary testing; any employer with more than 20 full-time employees must have a functioning EAP prior to testing their employees.

The following table and graph show the trend of non-federally-mandated drug testing from 1996 through 2005.

**Table 7. Substance Abuse Testing**

**Yearly Totals by Type of Test  
Applicants/Employees  
1996-2005**

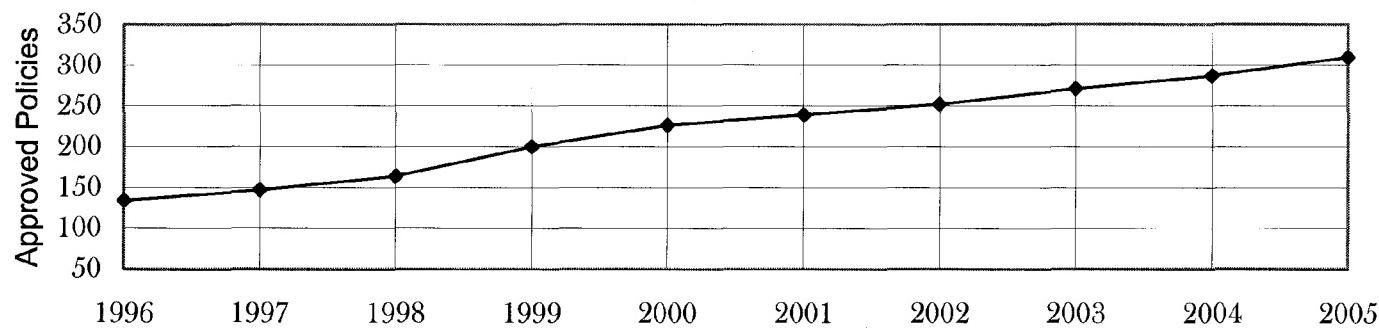
Year	Number of Employers w/ Policies	Total Tests	Total Positives	Percent Positive	Applicant Tests	Applicant Positives	Percent Positive	Probable Cause Tests	Probable Cause Positives	Percent Positive	Random Tests	Random Positives	Percent Positive
2005	310	17,742	749	4.2	16,876	706	4.2	18	9	50.0	863	34	3.9
2004	287	17,428	826	4.7	16,702	803	4.8	6	1	16.7	720	22	3.1
2003	271	16,129	761	4.7	15,345	727	4.7	29	7	24.1	755	27	3.6
2002	252	13,128	642	4.9	12,595	624	5.0	10	0	--	523	18	3.4
2001	239	16,492	730	4.4	15,947	716	4.5	8	1	12.5	537	13	2.4
2000	226	18,827	765	4.1	18,164	748	4.1	12	1	8.3	651	16	2.5
1999	200	20,725	691	3.3	20,118	660	3.3	9	4	44.4	598	27	4.5
1998	164	11,888	352	3.0	11,459	343	3.0	4	0	--	425	9	2.1
1997	147	13,097	392	3.0	12,616	375	3.0	7	1	14.3	474	16	3.4
1996	134	10,854	346	3.2	10,493	330	3.1	7	3	42.9	354	13	3.7

-- Indicates a value of less than 0.05%

C-18

**Figure 4.**

**Employers With Approved  
Substance Abuse Testing Policies  
1996-2005**



## **3B. RESEARCH PROJECTS OTHER THAN ANNUAL**

From time to time, the BLS initiates special research projects on selected OSH topics. Typically, such projects are non-repeating and they often make use of WCB data. The following are current examples.

### ***Capacity Building in OSH Surveillance***

In 2002, the BLS was awarded a three-year, \$250,000 National Institute of Occupational Safety and Health (NIOSH) grant for this and upcoming work. This project will be beneficial to Maine when researching relatively rare occupational injuries and illnesses. Having comparable data from other states will assist BLS in identifying risk factors by providing a larger pool of uniformly collected cases to research and analyze.

MDOL is part of the national work group that developed these indicators. The Council of State and Territorial Epidemiologists (CSTE), in association with NIOSH, convened the NIOSH-States Occupational Health Surveillance Work Group to make recommendations to NIOSH concerning state-based surveillance activities for the coming decade. The Work Group also identified a number of crosscutting surveillance issues and made several recommendations to NIOSH for the implementation of comprehensive state-based occupational health surveillance systems. These indicators are a construct of public health surveillance that define a specific measure of health or risk status (i.e., the occurrence of a health event or of factors associated with that event) among a specified population. Surveillance indicators allow a state to compare its health or risk status with that of other states, evaluate trends over time within the state, and guide priorities for prevention and intervention efforts.

Occupational health indicators can provide information about a population's status with respect to workplace factors that can influence health. These indicators can either be measures of health (work-related disease or injury) or factors associated with health, such as workplace exposures, hazards or interventions. These indicators are intended to:

- 1) Promote program and policy development at the national, state, and local levels to protect worker safety and health
- 2) Build core capacity for occupational health surveillance at the state level
- 3) Provide guidance to states regarding the minimum level of occupational health surveillance activity
- 4) Bring consistency to time trend analyses of occupational health status of the workforce within states and to comparisons among states.

The proposed project was divided into three parts to be implemented in yearly steps. During the first year (2003), the MDOL (BLS) identified and established contact with relevant advisory groups. The MDOL also began compiling data on the 13 core surveillance indicators and simultaneously assessing the strengths and limitations of data sources used. During the second year (2004), the MDOL conducted a descriptive analysis of the data collected and, based on the results of the analysis, selected three core surveillance indicators for an in-depth study. These were Fatality Assessment Control and Evaluation (FACE), OSH surveillance of young workers, and workplace

violence surveillance. A fourth, injury surveillance for seasonal and migrant workers, was added in 2005. During the third year (2005), the MDOL evaluated the core indicator program effectiveness as a surveillance tool and generated a report of the in-depth study, identifying the data gaps and proposing some recommendations to improve the surveillance approach.

By its participation in the NIOSH-States workgroup and working there on a manual for the development of OSH indicators, MDOL qualified to apply for the next round of funding under this NIOSH program. In 2005, the BLS in collaboration with the Maine Bureau of Health submitted a joint application to the NIOSH for an injury surveillance grant. The focus of this grant was to develop a model of core OSH indicators for collecting quality data that are comparable among all states. The application was not funded, but participation in this project continues.

#### ***New Reporting Form***

BLS developed a new computer reporting form that is able to look at an employer (or subset of employers or reports) and compare the group's numbers to a larger group (say, its industry) and to the state experience as a whole. It is able to look at the number of employees, the number of injuries and the total and average costs as reported to the Department of Labor and the Workers' Compensation Board, all through existing systems. The individual employer or group can supply its own employment figure if it is confidential. The larger groups are chosen to be aggregated to the point that confidentiality requirements are met. The report provides a means of assessing where the employer or group stands compared to its industry and to private employers in the state.

## 4: PROBLEM AREAS

### **4A. NEEDED IMPROVEMENTS IN DATA COLLECTION AND SHARING**

#### ***EDI AND MISSING FIELDS***

As of January 1, 2005, all filings of *First Reports* were required to be done by electronic data interchange (EDI), computer-to-computer, using one of two formats. Under EDI reporting, certain fields are classified as "required:" that is, necessary for a claim to be processed. Others are classified as "expected:" i.e., not required for a claim to be processed but necessary to complete a report. Although the WCB will request missing "expected" data from the reporting entity, that data may not be forthcoming or available to BLS for coding.

"Expected" fields include occupation, nature of injury code, part of body code, and cause of injury code. When these fields are missing, the BLS coder must call the reporting entity to attempt to get the information (massively time consuming). These fields are critical in BLS analysis for occupational safety and health planning, outreach and education, and prevention efforts. BLS has recommended that these particular fields be given mandatory status.

Presently, a filer with missing "expected" data is sent an error message. All identified errors must be corrected within 14 days after the date the acknowledgement transmission was sent by the WCB or prior to any subsequent submission for the same claim, whichever is sooner. The WCB is not presently going beyond the initial error message in terms of enforcement. Even after the filing entity makes the correction, there is no mechanism for communicating the revised data to BLS.

The implementation of EDI is presenting challenges at several levels. It is leading to more participants and complexity on one hand, yet it is creating discussion of data flow and quality checks on the other. The net effect on the completeness and quality of the data is not yet known as a result. It is clear that the implementation process is determining and plugging a number of reporting holes that existed with the manual system, yet the demand for certain data elements at certain times may result in fabricating data to get the system to accept the report. We will need to monitor the new process to be sure it results in the data we need but not data fabricated in order to get through the quality control features of the system. We want to avoid trading completeness for accuracy.

#### ***"Return to work date"***

Table 9 shows the missing information for the variable, "return to work date," as compared with the numbers of disabling cases from the WCB *First Report* forms for the past eight years (1998-2005). There were 6,705 cases with no return to work date for the year 2005 as of the tabulation of this data in October of 2006. This is a very large proportion of cases and would be a matter of great concern in terms of social and monetary cost if the employees were actually out of work. However,

the BLS strongly suspects, from known cases, that a significant number of these workers have actually returned to work.

This missing information prevents the BLS and the WCB from generating an accurate estimate of the number of workdays lost due to a work-related injury or illness. The "return to work date" is critical in conducting cost-benefit analyses of workplace safety programs. Other potential uses of this variable are that it would allow BLS and WCB to assess the severity of an injury or illness and to determine which industry sectors are experiencing more lost workdays.

**Table 9. Missing Return-to-Work Date, Maine, 1998-2005**

	1998	1999	2000	2001	2002	2003	2004	2005
Total Disabling Cases	13,111	16,348	17,292	17,001	15,866	15,319	14,404	13,959
No return-to-work date	7,342	7959	7,888	7,885	7,281	7,119	6,705	6,318
Percent of total	56.0	48.7	45.6	46.4	45.9	46.5	46.5	45.3

*Source: Workers' Compensation Board First Reports of Occupational Injury and Disease*

The RTW date became even more important to BLS in 2006. In the Department of Labor's new strategic plan, a new set of measures is called for to evaluate the effectiveness of prevention methods and to gauge where the state is and where we go as a system. The measures will involve worker-years lost due to work-related injury or illness. We want to be able to say, for instance, that XXX worker-years were lost to work-related injuries and illnesses in 2005. This measure is seen as a hybrid of the number of injuries and illnesses and how severe those injuries and illnesses are. Also it is a hybrid of primary and secondary preventions in that it not only tells us how serious the initial injury is but in how successful we are getting people back to work and minimizing disability after the incident. In aggregate, these measures would help us compare work lost to total employment in the system and among groups and types of injuries and illnesses. Eventually, it may prove to be an important tool in evaluating treatment protocols for specific injuries and illnesses and in long-term outcomes for back-to-work and other prevention programs and activities. Unlike past measures, this one would have quality measures inherent in it. The form of the new measures came from work that the National Institutes of Occupational Safety and Health (NIOSH) developed for loss of life due to work-related injuries. In a sense, this is loss of productivity and a measure useful for the incidents, the workers, the employers and the system as a whole.

As the system is now this measure will be a challenge in two respects even beyond the missing RTW dates. The first is that the system is not set up to record the past as it moves forward in time--instead it takes snapshot pictures of where the cases are at points in time. As it is now we can say how many worker-years were lost (to date) due to injuries that occurred in 2005, but the system is not geared to tell us how many worker-years were lost during 2005 for injuries that occurred *before* 2005. This may be a matter of programming and us learning how to appropriately process the existing information from the Workers' Compensation system. Or it may be a matter of accepting less than ideal information to do it (developing a "proxy").

The second way it may be a problem is that the system is not geared for reporting time the workers is out in situations where there are many small work interruptions such as occur with carpal tunnel and repetitive trauma. We can tell the duration from the start to finish of a payment episode, for

instance, but if there were both days at work and days out within that episode we are not sure if we can or how to tell this from the system. The solution to this problem also may be matter of coming up with how to do it with existing information, or in attempting to do this we may identify a need to modify the system.

As the system stands now we still have basic difficulties with identifying which workers are actually out and which have returned to work. As long as this remains the case, no meaningful estimate of worker-years lost can be derived. We believe the EDI process will clear at least some of the reporting holes, but we are still not sure it will plug all of them. We will be evaluating the quality of data as the changes are implemented.

#### *Costs data*

The individual case cost data from the WC system is now available and the Bureau is in the process of developing useful representations of it. One product already in use compares the total and average case costs for an employer to the total and average case costs for the employer's industry and for total and average case costs in the state and does so over a number of years. It has been used to show the effect of a change in case management for one company and for overall progress in another. In the next few years, we should be able to incorporate the cost data into tabulations that will be useful to compare and contrast groups of cases as we do for the numbers now. As with duration, the cost data also suffers from the problem of it being a "snapshot" of the cases at a point in time, some of which are closed and not accumulating further expenses and the others of which are open and continue to accumulate data. Eventually we will need to define and make a determination for "open" and "closed" cases and be able to tabulate data based on that characteristic.

The statistical variance (dispersion) in duration and cost will open new possibilities as well, telling us the groups and types of cases that have more uncertainty in their outcome. This, in turn, may allow us to focus attention on classes of cases where the medical treatment and case management is more a factor in what happens over the life of the case. This is consistent with research WCB is doing on the costliest cases where some of the findings show that some of the most costly cases are ones where the initial injury or illness was simple at the start.

## **4B. AN EFFORT TO IMPROVE DATA COLLECTION AND SHARING**

#### *Occupational Safety and Health Data Collection and Injury Prevention Work Group*

The Occupational Safety and Health Data Collection and Injury Prevention Work Group was convened in 2003 by the Department of Labor under 2003 Public Law chapter 471. Its creation had been advocated by the Maine Occupational Research Agenda (MORA, see below). The purpose of the Work Group is to evaluate the data currently available on work-related injuries and illnesses and to review efforts to prevent such injuries and illnesses. The Work Group will also identify ways to improve the collection and analysis of the data and to enhance related prevention efforts. Members were chosen to be broadly representative of those with interests and expertise in OSH and workers' compensation. The Work Group is expected to effectively address just such problems as those above. In 2006, the Work Group put its efforts regarding data collection and analysis into defining

specific problems and formulating specific recommendations concerning those problems. The results of this work will be reported to the legislature in early 2007. On the prevention side, a survey was developed to assess employers' perceived needs for OSH guidance and the sources of same actually utilized by employers. Results of this survey will be available some time in 2007.

## 5. 2006 DEVELOPMENTS

### **5A. GRANTS**

The BLS uses WCB data to supplement federal Bureau of Labor Statistics and OSHA data in developing OSH grant applications. No applications were submitted in 2006 because NIOSH funding was unavailable.

### **5B. PROGRAM INITIATIVES**

From time to time, based on evident needs, the BLS initiates or enters into partnerships initiating various programs promoting occupational safety and health. Those below were active or activated during 2006.

#### *MORA*

In 2000, following on discussions at the first Maine OSH Research Symposium, the BLS took the initiative to create a Maine Occupational Research Agenda. MORA is modeled after the NIOSH National Occupational Research Agenda (NORA). The Technical Services Division's OSH Epidemiologist, in collaboration with the MORA Steering Committee members, developed the research agenda and is moving it forward. MORA committee members include education and health professionals, members of several government agencies, and insurers. The Steering Committee members use WCB data, in addition to the federal Bureau of Labor Statistics and OSHA data, to develop and refine OSH research priorities and guide their implementation for Maine, MORA's primary mission. This activity justifies research efforts tailored to the state's needs and helps prioritize grant applications for research.

In 2005, MORA identified the following 3 research priorities:

- 1) Occupational Asthma
- 2) Cost Drivers
- 3) Pesticide related illnesses

MORA undertook or facilitated the following 2006 projects under those priorities:

**Occupational Asthma.** Working in collaboration with the American Lung Association and the Maine Asthma Program of the Department of Health and Human Services, a workplace training curriculum was developed and piloted using schools and hospitals as the workplace settings. This program was presented at the Occupational Safety and Health Conference held in Augusta in the fall of 2006. Informational handouts were also created and are now available on the Lung Association web page for employers and employees.

**Cost Drivers.** Legislation enacted in 1992 by the Maine State Legislature required the Workers' Compensation Board (PL 1991) to evaluate employee's post-injury earnings as well as their future employment prospects. In 2004 the Harvard School of Public Health under a pilot project

sponsored by the National Institute for Occupational Safety and Health funded phase I, the development of the survey.

This project has developed a survey that will evaluate the health, financial status, and post-settlement employment experience of workers that have received a lump-sum settlement for injuries compensated by workers' compensation insurance. The Workers' Compensation Board at their meeting in January 2006 approved funds that have allowed for the implementation of the survey (phase II). A final report of results is expected in early 2007.

**Pesticide Related Illnesses.** MORA reviewed the available sources of data on work related pesticide exposures and poisonings in Maine. There is some data available through the Poison Control Center, though the work relatedness is not always indicated. In addition, the Maine Health Data Organization (MHDO) maintains data on inpatient hospitalizations, outpatient visits, and emergency room visits. Diagnoses are coded and work relatedness is usually determined by the payer code for "workers' compensation." Prior experience has indicated that using payer code to determine work relatedness often underestimates the occurrence of work related events. Judith Gruber from the Maine Centers for Disease Control, who reviewed the MHDO data that is available, suggested that work relatedness could also be inferred from the "place of occurrence" code. The MHDO data primarily identifies the occurrence of acute, recognized poisonings.

After reviewing the data that is available, MORA identified a data gap regarding both the occurrence of pesticide exposure (without regard to effect) and the occurrence of cases of milder or more chronic health effects of pesticide exposure. MORA reviewed pesticide exposure monitoring programs from other states and learned about a proposal for a pilot cholinesterase monitoring program of pesticide handlers and field workers in Maine. If funded, this study would help to define whether organophosphate or carbamate pesticide exposures are sufficiently prevalent in Maine to warrant a more comprehensive monitoring program.

**Small Grants Program.** In addition to these projects, in 2006 MORA established a small grants (\$1,000 or less) program to support development of proposals under its priorities or to be used as "seed money" in seeking larger grants. No grants have as yet been awarded from this program.

For more information on MORA, go to MORA's website, [www.maine.gov/labor/bls/MORA.htm](http://www.maine.gov/labor/bls/MORA.htm).

#### ***Data Outreach Initiative***

In 2004, the Research and Statistics Unit of the BLS intensified its efforts to place its accumulated data and data-related services before the public. This outreach initiative took the form of such items as a "data wheel" publication – a circular card stock slide rule summarizing both SOII and WCB data in tabular form – and a promotional trifold, entitled *Occupational Injury and Illness Data Profiles*, explaining the Unit's profile service and describing its major data sources. These were distributed in various ways, including as handouts at seven annual conferences such as the Construction Expo in April and the Maine Employers' Mutual Insurance Company Conference in November. Unit personnel attended most of these meetings in order to answer questions and take

requests for profiles. In some instances, data profiles could be done on site. This initiative was continued in 2006.

#### ***SHARP and SHAPE***

SafetyWorks!, in partnership with federal OSHA, administers the Safety and Health Achievement Recognition Program (SHARP). Under this program, a private employer with 250 or fewer employees who meets the program requirements for employee safety and health, including a functional safety and health program, is exempted from programmed inspection for one year after a probationary period. The probationary period is used to fine tune the employer's program and make sure that all SHARP requirements are met. Employers successfully meeting SHARP requirements are publicly honored. Eleven employers qualified in 2006 and three were in the probationary phase.

In 2006, SafetyWorks! initiated the Safety and Health Award for Public Employers (SHAPE) program, a public-sector application of the federal private-sector SHARP program. Three employers qualified in the SHAPE program in 2006.

### **5C. LEGISLATION**

Also from time to time, the BLS provides information of various kinds in support of or response to new OSH legislation. The following is an example from 2006:

2005 Resolves, chapter 167 [LD 1699], "Resolve, To Direct the Department of Labor To Coordinate a Task Force To Examine and Study Issues Relating to Workplace Safety and Workplace Violence," requires the Department to convene a group to study the extent of and possible responses to workplace violence. Specifically the group is to look at the adequacy of current laws and rules, the effect of notification of employees, and the need for panic buttons and other security systems. The Task Force includes advocates for victims, representatives of business groups, and law enforcement. BLS used data from the WC system to look into assaults reported through that system and their causes. The system's detail and relative completeness for the group it represents is proving valuable in providing a defined set of data for the situation in Maine. The report to the Labor Committee was due January 15, 2007.

